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federal register

Tuesday
July 9, 1985

Selected Subjects

CONTINUED INSIDE

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Selected Subjects

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Part II

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Liaison: Diana Moslak 254-8446
Alternate: Joan Rogers 254-8356

Tom Vontz 805-764-5648 Forage Seeding information

Rules and Regulations

in USDA no field species listed -

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for Kern County California → 11:00 am

pg. 131 USDA call Manager

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Ch. IV

[Docket No. 0027A]

Crop Insurance Regulations—Various (General Amendment—Appendix)

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby amends the crop insurance regulations in Chapter IV of Title 7 of the Code of Federal Regulations, effective for the 1985 and succeeding crop years, by removing the "Appendix" list of counties designated for crop insurance from all crop insurance regulations promulgated by FCIC. Publication of the lists is not necessary since information as to the availability of crop insurance may be obtained from local FCIC service offices. The intended effect of this rule is to reduce the length of the documents and lower the administrative costs involved in the printing and codification of these county listings in the **Federal Register** and Code of Federal Regulations (CFR). The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

EFFECTIVE DATE: August 8, 1985.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C. 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation No. 1512–1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review dates established for these regulations are contained in the supplementary material accompanying the last republication of each regulation in the **Federal Register**.

Merritt W. Sprague, Manager, FCIC, has determined that this action (1) is not a major rule as defined by Executive Order No. 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, Federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) will not increase the Federal paperwork burden for individuals, small businesses, and other persons.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessement nor an Environmental Impact Statement is needed.

It has been the practice of FCIC, when publishing each of its regulations for insuring crops, to include an Appendix listing those counties where such crop insurance is available. The provisions requiring such publication were made part of each regulation in subsection .1 (Example: § 418.1 Availability of wheat crop insurance).

Merritt W. Sprague, Manager, FCIC, has determined that, due to the increasing number of counties where FCIC offers crop insurance on a variety of crops, the costs of printing in the **Federal Register** and subsequent costs involved in codification in the Code of Federal Regulations (CFR), have become excessive and outweigh whatever benefit is derived from codification.

Information regarding the availability of crop insurance in any given county is presently available from FCIC service offices at the local level, making the publication of these lists unnecessary.

On Friday, February 1, 1985, FCIC published a notice of proposed rulemaking in the **Federal Register** at 50 FR 4693, amending Chapter IV of Title 7 of the Code of Federal Regulations, effective for the 1985 and succeeding crop years, to remove the "Appendix" list of counties designated for crop insurance from all crop insurance regulations promulgated by FCIC pertaining to individual crops or groups of crops. The public was given 60 days in which to submit written comments on the proposed rule, but no comments were received.

List of Subjects in 7 CFR Ch. IV

Crop insurance, Various crops.

Final Rule

PART 400—[AMENDED]

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby amends all crop insurance regulations promulgated under such authority (7 CFR Part 400 *et seq.*) referred to herein, to remove the Appendix and all references to such appendix therein, effective for the 1985 and succeeding crop years, in the following instances:

1. The authority citation for 7 CFR Part 400 *et seq.*, continues to read as follows:

Authority: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77 as amended (7 U.S.C. 1506, 1516).

2. 7 CFR Parts 402, 404, 408, 409, 410, 411, 413, 414, 415, 416, 417, 418, 419, 423, 426, 427, 429, 430, 439, 440, 441, 442, 444, 445, and 446 are revised by removing Appendix A.

3. 7 CFR Parts 402.1, 403.1, 404.1, 408.1, 409.1, 410.1, 411.1, 413.1, 414.1, 415.1, 416.1, 417.1, 418.1, 419.1, 423.1, 426.1, 427.1, 429.1, 430.1, 439.1, 440.1, 441.1, 444.1, 445.1, and 446.1 are revised to read as follows:

§ _____ Availability of (name of crop) crop insurance.

Insurance shall be offered under the provisions of this subpart on (name of crop) in counties within limits prescribed by, and in accordance with the provisions of the Federal Crop Insurance Act, as amended. The counties shall be designated by the Manager of the Corporation from those approved by the Board of Directors of the Corporation.

4. 7 CFR Parts 402.6, 403.6, 404.6, 408.6, 409.6, 410.6, 411.6, 413.6, 414.6, 415.6, 416.6, 417.6, 423.6, 426.6, 429.6, 430.6, 439.6, 440.6, 441.6, 442.6, 444.6, 445.6, and 446.6 are revised to read as follows:

§ _____ The contract.

The insurance contract shall become effective upon the acceptance by the Corporation of a duly executed application for insurance on a form prescribed by the Corporation. The contract shall cover the (name of crop) crop as provided in the policy. The contract shall consist of the application, the policy, and the county actuarial table. Any changes made in the contract shall not affect its continuity from year to year. The forms referred to in the contract are available at the applicable service office.

Done in Washington, D.C., on June 27, 1985.

Peter F. Cole,

Secretary, Federal Crop Insurance Corporation.

Dated: June 27, 1985.

Approved by:

Edward Hews,

Acting Manager.

[FR Doc. 85-16237 Filed 7-8-85; 8:45 am]

BILLING CODE 3410-08-M

Agricultural Marketing Service

7 CFR Part 908

[Valencia Orange Reg. 352]

Valencia Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 352 establishes the quantity of fresh California-Arizona Valencia oranges that may be shipped to market during the period July 12–July 18, 1985. The regulation is needed to provide for orderly marketing of fresh Valencia oranges for the period specified due to the marketing situation confronting the orange industry.

DATE: Regulation 352 (§ 908.652) is effective for the period July 12–July 18, 1985.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone: 202–447–5975.

SUPPLEMENTARY INFORMATION:

Findings

This rule has been reviewed under USDA procedures and Executive Order 12291 and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

The regulation is issued under Marketing Order No. 908, as amended (7 CFR Part 908), regulating the handling of Valencia oranges grown in Arizona and designated part of California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The action is based upon the recommendation and information submitted by the Valencia Orange Administrative Committee (VOAC) and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the act.

The regulation is consistent with the marketing policy for 1984–85. The committee met publicly on July 2, 1985, to consider the current and prospective conditions of supply and demand and recommended a quantity of Valencia oranges for the specified week. The committee reports that demand is steady for fruit of all sizes; nevertheless, they report a severe fruit transportation problem due to significant competition from other summer fruits.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because there is insufficient time between the date when information upon which the regulation is based became available and the effective date necessary to effectuate the declared policy of the act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. To effectuate the declared policy of the act, it is necessary to make the regulatory provisions effective as specified, and handlers have been notified of the regulation and its effective date.

List of Subjects in 7 CFR Part 908

Marketing agreements and orders, California, Arizona, Oranges (Valencia).

PART 908—[AMENDED]

1. The authority citation for Part 7 CFR Part 908 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 908.652 is added to read as follows:

§ 908.652 Valencia Orange Regulation 352.

The quantities of Valencia oranges grown in California and Arizona which may be handled during the period July 12, 1985, through July 18, 1985, are established as follows:

(a) *District 1:* 200,000 cartons;

(b) *District 2:* 300,000 cartons;

(c) *District 3:* Unlimited cartons.

Dated: July 3, 1985.

Thomas R. Clark,

Acting Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 85-16314 Filed 7-8-85; 8:45 am]

BILLING CODE 3410-02-M

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 85-060]

Sheep and Goats From Canada

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This document amends the regulations concerning the importation into the United States of sheep and goats from Canada. The regulations require as a condition of importation that such sheep and goats be accompanied by a health certificate representing that the animals are free from communicable diseases and exposure thereto. Prior to the effective date of this document, the regulations provided for issuance of the health certificate by a salaried veterinarian of the Canadian Government. This document amends the regulations to provide that the health certificate for such animals be either: (1) Issued by a salaried veterinarian of the Canadian Government or (2) issued by a veterinarian authorized by the Canadian Government to issue such certificates and subsequently endorsed by a salaried veterinarian of the Canadian Government, thereby representing that

the veterinarian issuing the certificate was authorized to do so. It has been determined that determinations necessary to issue the certificate can be adequately done by any veterinarian who is authorized by the Government of Canada to do so, and that the provisions are adequate to ensure that such sheep and goats are free from communicable diseases and exposure thereto without imposing an unwarranted burden on the animal health authority of the Canadian Government.

EFFECTIVE DATE: August 8, 1985.

FOR FURTHER INFORMATION CONTACT: Dr. A. A. Furr, Import-Export Animals and Products Staff, VS, APHIS, USDA, Room 846, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8170.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR Part 92 (the regulations) regulate the importation into the United States of specified animals and animal products in order to prevent the introduction into the United States of various diseases.

With respect to the importation into the United States of sheep and goats from Canada, prior to the effective date of this document, the regulations in § 92.21 provided, with certain exceptions, that these animals shall be accompanied by a certificate issued by a salaried veterinarian of the Canadian Government stating certain specified information concerning the health of the animals.

A document published in the **Federal Register** on March 21, 1985 (50 FR 11376–11377), proposed to amend these regulations. Specifically, it was proposed to amend § 92.21 to provide the certificate could be either: (1) Issued by a salaried veterinarian of the Canadian Government or (2) issued by a veterinarian authorized by the Canadian Government to issue such certificates and subsequently endorsed by a salaried veterinarian of the Canadian Government, thereby representing that the veterinarian issuing the certificate was authorized to do so.

The document of March 21, 1985, invited the submission of written comments on or before May 20, 1985. No comments were received. Based on the rationale set forth in the proposal, the regulations are amended as proposed.

Executive Order 12291 and Regulatory Flexibility Act

This action has been reviewed in conformance with Executive Order 12291 and has been determined to be not a "major rule." The Department has determined that this rule will not have a significant annual effect on the economy; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will have no significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

It is not anticipated that this change will have any significant effect on the number of sheep and goats imported into the United States from Canada.

Under the circumstances explained above, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 9 CFR Part 92

Animal diseases, Canada, Imports, Livestock and livestock products, Quarantine, Transportation.

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMALS AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

Accordingly, 9 CFR Part 92 is amended as follows:

1. The authority citation for Part 92 continues to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 134a, 134b, 134c, 134d, 134f, and 135; 7 CFR 2.17, 2.51, and 371.2(d).

§ 92.21 [Amended]

2. In § 92.21(a) the introductory text is amended to read as follows: "Sheep and goats offered for importation from Canada shall be accompanied by a certificate either issued by a salaried veterinarian of the Canadian Government or issued by a veterinarian authorized by the Canadian Government to issue such certificates and subsequently endorsed by a salaried veterinarian of the Canadian Government, thereby representing that the veterinarian issuing the certificate was authorized to do so. The certificate shall state:"

Done at Washington, D.C., this 2nd day of July 1985.

J.K Atwell,

Deputy Administrator, Veterinary Services.

[FR Doc. 85–16226 Filed 7–8–85; 8:45 am]

BILLING CODE 3410–34–M

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9 CFR Part 91

[Docket No. 85–059]

Ports Designated for Exportation of Animals

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: This document amends the "Inspection and Handling of Livestock for Exportation" regulations by adding Honolulu, Hawaii, to the list of ports designated as ports of embarkation and by adding the Hawaii State Quarantine Station as the export inspection facility for that port. The effect of this action is to add an additional port through which animals may be exported. This action is necessary because it has been determined that the export inspection facility of the Hawaii State Quarantine Station for the port at Honolulu meets the requirements of the regulations for inclusion in the list of export inspection facilities.

DATES: Effective date is July 9, 1985.

Written comments must be received on or before September 9, 1985.

ADDRESS: Written comments should be submitted to Thomas O. Gessel, Director, Regulatory Coordination Staff, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Comments should state that they are in response to docket number 85–059. Written comments received may be inspected at Room 728 of the Federal Building, 8 a.m. to 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. George Winegar, Import/Export Animals and Products Staff, VS, APHIS, USDA, Room 845, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8383.

SUPPLEMENTARY INFORMATION:

Background

This document amends the "Inspection and Handling of Livestock for Exportation" regulations in 9 CFR Part 91 (referred to below as the regulations) which regulate the exportation of animals from the United States. Pursuant to a request from the Hawaii State Quarantine Station, this

document amends § 91.14 by adding Honolulu, Hawaii, to the list of ports designated as ports of embarkation and by adding the Hawaii State Quarantine Station as the export inspection facility for that port. With certain exceptions, all animals exported are required to be exported through ports designated as ports of embarkation.

To receive approval as a port of embarkation, a port must have export inspection facilities available for inspecting, holding, feeding, and watering animals prior to exportation in order to ensure that the animals meet certain requirements specified in the regulations. The regulations provide that approval of each export inspection facility shall be base on compliance with specified standards in § 91.14(c) concerning materials, size, inspection implements, cleaning and disinfection, feed and water, access, testing and treatment, location, disposal of animal wastes, lighting, and office and rest room facilities.

It has been determined that the Hawaii State Quarantine Station meets the requirements of § 91.14(c). This facility is located at 99–762 Moanalua Road, Aiea, Hawaii 96701. Therefore, it is necessary to add Honolulu, Hawaii, to the list of ports designated as ports of embarkation and the Hawaii State Quarantine Station as the export inspection facility for the port of Honolulu.

Executive Order 12291 and Regulatory Flexibility Act

This document has been reviewed in conformance with Executive Order 12291 and has been determined to be not a major rule. The Department has determined that this action will not have an annual effect on the economy of $100 million or more; will not cause a major increase in costs or prices for consumers, individuals industries, Federal, State, or local government agencies, or geographic regions; and will not have any adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

It is anticipated that, compared with the total number of animals exported annually from the United States, less than one percent of the total number of animals will be exported annually through the port of Honolulu.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Emergency Action

Dr. John K. Atwell, Deputy Administrator of APHIS for Veterinary Services, has determined that an emergency situation exists which warrants publication of this interim rule without prior opportunity for public comment. The export inspection facility at the port being added to the list of designated ports of embarkation has met the standards for export inspection facilities set forth in § 91.14(c) of the regulations. The addition of this port and export inspection facility must be made promptly in order to inform exporters so that they can make appropriate plans to export their animals and avoid unnecessary restrictions on the exportation of animals.

Therefore, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that prior notice and other public procedures with respect to this interim rule are unnecessary, and good cause is found for making this interim rule effective upon publication. Comments are being solicited for 60 days after publication of this document. A final document discussing comments received and any amendments required will be published in the **Federal Register**.

List of Subjects in 9 CFR Part 91

Animal diseases, Animal welfare, Exports, Humane animal handling, Livestock and livestock products, Transportation.

PART 91—INSPECTION AND HANDLING OF LIVESTOCK FOR EXPORTATION

Accordingly, 9 CFR Part 91 is amended as follows:

1. The authority citation for Part 91 is revised to read as set forth below and the authority citations following all the sections in Part 91 are removed:

Authority: 21 U.S.C. 105, 112, 113, 114a, 120, 121, 134b, 134f, 612, 613, 614, 618, 46 U.S.C. 466a, 466b, 49 U.S.C. 1509(d); 7 CFR 2.17, 2.51, and 371.2(d).

2. In § 91.14 paragraphs (a)(3) through (14) are redesignated as paragraphs (a)(4) through (15), respectively, and a new paragraph (a)(3) is added to read as follows:

§ 91.14 Ports of embarkation and export inspection facilities.

(a) * * *

(3) *Hawaii.*

(i) Honolulu—airport and ocean port.

(A) Hawaii State Quarantine Station, 99–762 Moanalua Road, Aiea, Hawaii 97601, (808) 487–5351.

* * * * *

Done at Washington, D.C., this 2nd day of July 1985.

J.K. Atwell,

Deputy Administrator, Veterinary Services.

[FR Doc. 85–16227 Filed 7–8–85; 8:45 am]

BILLING CODE 3410-34-M

FARM CREDIT ADMINISTRATION

12 CFR Part 611

Organization; Effective Date

AGENCY: Farm Credit Administration.

ACTION: Notice of effective date.

SUMMARY: The Farm Credit Administration (FCA) published final new and amended regulations concerning amendments to charters of Federal land bank associations and production credit associations and procedures for effecting mergers and consolidations of such associations (50 FR 20396, May 16, 1985). These new and amended regulations improve the procedures for amending association charters and effecting mergers and consolidations. In addition, the merger and consolidation procedures set forth the requirements for disclosure of information to voting stockholders to ensure that they are adequately informed regarding association merger or consolidation proposals.

The final rule was published on May 16, 1985, and provided that notice of the actual effective date would be subsequently published (50 FR 20396). In accordance with 12 U.S.C. 2252, the effective date of the final rule is 30 days from the date of publication in the **Federal Register** during which either or both Houses of Congress are in session. Based on the records of the sessions of Congress, the effective date of this rule was June 24, 1985.

EFFECTIVE DATE: June 24, 1985.

FOR FURTHER INFORMATION CONTACT:

Rose M. Ferguson, Office of Examination and Supervision, (703) 883–4430

or

Kenneth L. Peoples, Office of the General Counsel, (703) 883–4024, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090

(Secs. 1.13, 2.10, 4.12, 5.9, 5.12, 5.18, Pub. L. 92-181, 85 Stat. 619, 620, 621 (12 U.S.C. 2031, 2091, 2183, 2243, 2246 and 2552))

Frederick R. Medero,

Acting Governor.

[FR Doc. 85-16205 Filed 7-8-85; 8:45 am]

BILLING CODE 6705-01-M

12 CFR Part 617

Examinations, Audits, and Investigations; Effective Date

AGENCY: Farm Credit Administration.

ACTION: Notice of effective date.

SUMMARY: The Farm Credit Administration (FCA) published a final regulation dealing with the frequency of examinations and audits of each Farm Credit System institution by the FCA (50 FR 20091, May 14, 1985). Examinations and audits of each Federal land bank association were required to be performed once each 18 months; this final regulation extends the time period between required examinations and audits to once each 36 months.

The final rule was published on May 14, 1985, and provided that notice of the actual effective date would be subsequently published (50 FR 20091). In accordance with 12 U.S.C. 2252, the effective date of the final rule is 30 days from the date of publication in the **Federal Register** during which either or both Houses of Congress are in session. Based on the records of the sessions of Congress, the effective date of this rule was June 22, 1985.

EFFECTIVE DATE: June 22, 1985.

FOR FURTHER INFORMATION CONTACT: John C. Moore, Assistant Deputy Governor, Office of Examination and Supervision, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102-5090, (703) 883-4401.

(Secs. 5.9, 5.12, 5.18, Pub. L. 92-181, 85 Stat. 619, 620, 621 (12 U.S.C. 2243, 2246 and 2252))

Frederick R. Medero,

Acting Governor.

[FR Doc. 85-16204 Filed 7-8-85; 8:45 am]

BILLING CODE 6705-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 84-NM-39-AD; Amdt. 39-5092]

Airworthiness Directives; British Aerospace Model BAC 1-11 400 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD) applicable to British Aerospace Model BAC 1-11 400 series airplanes which requires repetitive inspections, functional tests, and replacement of components, if necessary, of the ground spoiler (lift dumper) activating mechanism on British Aerospace BAC 1-11 400 series airplanes. There have been two incidents reported where one ground spoiler deployed during approach, causing an uncommanded roll.

DATES: Effective August 15, 1985.

ADDRESSES: The service bulletin specified in this AD may be obtained upon request to British Aerospace, Inc., Box 17414, Dulles International Airport, Washington, D.C. 20041, or may be examined at the Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Sulmo Mariano, Standardization Branch, ANM-113, telephone (206) 431-2979. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: The United Kingdom Civil Aviation Authority (CAA) has classified British Aerospace BAC 1-11 Service Bulletin 27-A-PM5890 as mandatory. Two incidents have occurred in service where, following depressurization of the No. 1 hydraulic system, one ground spoiler (lift dumper) deployed during approach, causing the aircraft to roll. Ground spoilers are normally held in position by No. 1 hydraulic system pressure. In the event of a pressure loss, the ground spoilers are held in place by mechanical locks. Excessive wear or corrosion can degrade the mechanical locks so that reservoir pressure on the full area side of the actuator piston is sufficient to extend the ground spoiler.

A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive which requires inspections of the ground spoiler activating mechanism was published in the **Federal Register** on April 8, 1985 (50 FR 13810). The comment period closed on May 28, 1985, and interested persons have been afforded an opportunity to participate in the making of this amendment. Only one comment was received. The commenter, the manufacturer, indicated that the British Aerospace Model BAC 1-11 airplane has "lift dumpers (ground spoilers)" and "spoilers." To avoid confusion, the commenter suggested that the terms "ground spoilers" or "lift dumpers" be used in the AD when referring to the part affected by the required inspection. The FAA concurs and the terminology in the final rule has been changed accordingly.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously noted.

It is estimated that 25 airplanes of U.S. registry will be affected by this AD, that it will take approximately 6 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Repair parts are estimated at $300 per airplane. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $13,500.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because few, if any, British Aerospace Model BAC 1-11 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.89; and 49 CFR 1.47.

2. By adding the following new airworthiness directive:

British Aerospace: Applies to Model BAC 1-11 series 400 airplanes certificated in any category. Compliance is required as indicated. To prevent asymmetrical deployment of ground spoilers (lift dumpers) accomplish the following, unless previously accomplished within the last 1000 landings or one year, whichever occurred earlier:

A. Within the next 100 landings or 30 days after the effective date of this AD, whichever occurs first, and thereafter at intervals not to exceed 5,000 landings from the last

inspection, inspect the ground spoiler mechanical locks for misalignment, and adjust if necessary, in accordance with the accomplishment instructions of British Aerospace BAC 1-11 Alert Service Bulletin 27-A-PM5890, dated December 21, 1983.

From the results of the inspection above:

1. If two or more mechanical locks out of the four per ground spoiler are found unserviceable, perform an operational check of the ground spoilers prior to further flight and thereafter at intervals not to exceed 600 landings or 150 days, whichever occurs earlier, until defective components are replaced in accordance with the accomplishment instructions of the service bulletin.

2. If one mechanical lock out of the four per ground spoiler is found unserviceable, perform an operational check of the ground spoilers prior to further flight and thereafter at intervals not to exceed 2,500 landings in accordance with the accomplishment instructions of the service bulletin until defective components are replaced.

3. If the mechanical lock system fails the operational check conducted in accordance with paragraphs A.1. or A.2., above, the locks must be repaired or the ground spoilers rendered inoperative in accordance with the accomplishment instructions of the service bulletin prior to further flight.

B. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

This amendment becomes effective August 15, 1985.

Issued in Seattle, Washington, on July 1, 1985.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 85-16199 Filed 7-8-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 84-NM-117-AD; Amdt. 39-5090]

Airworthiness Directives; Dassault-Breguet Mystere-Falcon 50 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires inspection for proper installation of passenger oxygen mask presentation boxes on Dassault-Breguet Mystere-Falcon 50 airplanes. The AD is prompted by a report of improper installation of the passenger oxygen mask presentation box in this airplane, which, if uncorrected, could cause the lanyard to hang up when pulled to initiate the flow of oxygen into the mask.

DATES: Effective August 15, 1985.

Compliance schedule as prescribed in the body of the AD, unless already accomplished.

ADDRESSES: The applicable service information may be obtained from AiResearch Aviation, 4150 Donald Douglas Drive, Long Beach, California 90808. This information also may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Western Aircraft Certification Office, 15000 Aviation Boulevard, Hawthorne, California.

FOR FURTHER INFORMATION CONTACT: Mr. Walter Eierman, Aerospace Engineer, Systems & Equipment Section, ANM-173W, FAA, Northwest Mountain Region, Western Aircraft Certification Office; telephone (213) 536-6388. Mailing address: FAA, Northwest Mountain Region, Western Aircraft Certification Office, ANM-173W, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009-2007.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include a new airworthiness directive (AD) to require inspection for proper installation of passenger oxygen mask presentation boxes on Dassault-Breguet Mystere-Falcon 50 airplanes was published in the **Federal Register** on April 5, 1985 (50 FR 13611). The comment period for the proposal closed on May 28, 1985.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Only one comment was received and the commenter concurred with the AD.

It is estimated that 20 airplanes of U.S. registry will be affected by this AD, that it would take approximately 2.5 manhours per airplane to accomplish the required actions, and the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of this AD on the U.S. operators is estimated to be $2,000.

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities, because few, if any, Dassault-Breguet Mystere-Falcon 50 series airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); 14 CFR 11.89; and 49 CFR 1.47.

2. By adding the following new AD:

Dassault-Breguet: Applies to Mystere-Falcon 50 airplanes, serial numbers as follows: 014, 026, 035, 038, 039, 041, 045, 051, 053, 059, 069, 079, 081, 086, 087, 099, 105, 108, 124, 125; certificated in all categories.

Compliance required within 90 days from the effective date of this AD, unless previously accomplished.

To prevent a lanyard hang-up when the lanyard is pulled to initiate the flow of oxygen into the oxygen mask, accomplish the following:

A. Each passenger emergency oxygen mask presentation box not located on the fuselage vertical center line must be inspected for orientation. Accomplish by manually opening the presentation box cover lids and inspecting to ensure that the presentation boxes are installed with the oxygen inlet fitting in the side of the oxygen box in the inboard position (pointed toward the fuselage center line). Any box not installed with this orientation must be removed and reinstalled in such a way that it is rotated 180° so that the inlet fitting is in the inboard position.

Note.—AiResearch Aviation Service Bulletin No. 9.1 pertains to this subject.

B. Alternate inspections, modifications, or other actions which provide an acceptable level of safety may be used when approved by the Manager, Western Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to ferry airplanes to a maintenance base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to AiResearch Aviation, 4150 Donald Douglas Drive, Long Beach, California 90808. These documents also may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Western Aircraft

Certification Office, 15000 Aviation Boulevard, Hawthorne, California.

This amendment becomes effective August 15, 1985.

Issued in Seattle, Washington, on July 1, 1985.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 85-16200 Filed 7-8-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 84-NM-118-AD; Amdt. 39-5091]

Airworthiness Directives; Garrett Model GTCP331-200A and -200AC Auxiliary Power Units Installed on Boeing Model 757 and 767 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which provides for the modification of the fan assembly on Garrett Auxiliary Power Units (APU) installed on Boeing Model 757 and Boeing Model 767 series airplanes. This action is prompted by reports of thirteen failures of the APU cooling fan, two of which were uncontained. This conditions, if not corrected, could result in a potential fire hazard.

DATES: Effective August 15, 1985.

Compliance schedule as prescribed in the body of the AD, unless already accomplished.

ADDRESSES: The applicable service information may be obtained from Garrett Turbine Engine Company, Post Office Box 5217, Phoenix, Arizona 85010. This information may also be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Western Aircraft Certification Office, 15000 Aviation Boulevard Hawthorne, California.

FOR FURTHER INFORMATION CONTACT: Mr. Bill Moring, Aerospace Engineer, Propulsion Section, ANM-174W, FAA, Northwest Mountain Region, Western Aircraft Certification Office, P.O. Box 92007, Worldway Postal Center, Los Angeles Cafifornia 90009, telephone (213) 536-6382.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive requiring modification of the fan assembly on Garrett auxiliary power units GTCP331-200A and -200AC installed on Boeing Model 757 and 767 series airplanes was published in the **Federal Register** on January 29, 1985, (50 FR 3916). The comment period for the proposal closed on March 18, 1985.

Interested persons have been afforded an opportunity to participate in the making of the amendment. Due consideration has been given to the five comments received.

One commenter stated that the AD is unwarranted and that the failure of the APU cooling fan could not result in a fire. The FAA does not agree with the commenter because of instances from service history in which debris from the fan disintegration damaged, in one case, the APU electrical wire bundle and, in two other cases, caused leaks in the APU engine oil system.

Several comments were received which requested an extension of the compliance time until the regularly scheduled shop vist of the APU. It is not the intent of the FAA to disrupt schedule flight operations to incorporate the cooling fan modification. However, the manufacturer has notified the FAA that sufficient parts and modification facilities are now available at no cost to the operator to accomplish this modification. Furthermore, changing the fan assembly with the APU installed on the airplane is estimated to take thirty minutes. This is not considered an unreasonable burden. Therefore, the proposed compliance time is unchanged.

One commenter requested to be permitted to continue the inspections at 250 hour intervals until the APU comes into the shop for regularly scheduled maintenance. Testing by the manufacturer has established that high cycle fatigue failure of the cooling fan may occur in a matter of minutes. Consequently, the FAA has determined that inspection at 250 hour intervals would not be adequate to detect and preclude failure of the cooling fan assembly.

One commenter recommended that all aircraft approved under FAR 121.161 for two engine extended range (ER) operation have this AD incorporated prior to dispatch for such operations. The dispatch of extended range aircraft is beyond the scope of this AD and must be considered separately from this rulemaking action.

It is noted that the NPRM addressed this APU installation in Boeing 757 and 767 series airplanes. If the operators of other airplanes seek registration in the United States with the GTCP331 series APU installed, an amendment to this AD to include these airplanes would be considered.

It is estimated that 230 airplanes of U.S. registry will be affected by this AD. It will require approximately 0.5 manhour per airplane to accomplish the required modification. The average labor charge is $40 per hour. Modification parts will be furnished by the manufacturer at no charge. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $4,600.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adopting of the rule as proposed.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities, because few, if any, Model 757 and 767 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket. A copy of it may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT."**

List of Subjects in 14 CFR Part 39

Aviation safety, Aircarft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulation as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-4499, January 12, 1983); 14 CFR 11-89; and 49 CFR 1.47.

2. By adding the following new airworthiness directive:

Garrett Turbine Engine Company [GTEC] (formerly AiResearch Manufacturing Company of Arizona): Applies to GTEC Models GTCP331-200A and -200AC Auxiliary Power Units (APU) installed on Boeing Model 757 and Boeing Model 767 series airplanes with fan assembly, Garrett Part Number 3862160-3 and -4 installed. Compliance is required as indicated, unless already accomplished.

To prevent the possibility of an uncontained APU cooling fan failure, accomplish the following:

A. Upon removal of the cooling fan assembly, Garrett Part No. 3862160-3 or -4, from an affected GTCP331-200A or -200AC

Auxiliary Power Unit (APU) for any reason, or within 1,000 airplane operating hours after the effective date of this AD, or prior to September 15, 1985, whichever comes first, incorporate the new fan assembly with the improved fan containment housing as specified in Section 2.A., "Accomplishment Instructions," of GTEC Service Bulletin GTCP331–49–5546, dated August 9, 1984, or equivalent approved by the Manager, Western Aircraft Certification Office, FAA, Northwest Mountain Region.

B. Alternate means of compliance with this AD which provide an acceptable level of safety may be used when approved by the Manager, Western Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a maintenance base in order to comply with the requirements of this AD.

All persons affected by this proposal who have not already received these documents from the manufacturer may obtain copies upon request to the Garrett Turbine Engine Company, Post Office Box 5217, Phoenix, Arizona 85010. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 15000 Aviation Boulevard, Hawthorne, California.

This amendment becomes effective August 15, 1985.

Issued in Seattle, Washington, on July 1, 1985.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 85–16201 Filed 7–8–85; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 85–AGL–11]

Alteration of Transition Area—Shell Lake, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this Federal action is to alter the Shell Lake, Wisconsin, transition area to accommodate existing conditions and to ensure that the Shell Lake Municipal Airport instrument approach procedure will be contained within controlled airspace.

The intended effect of this action is to ensure segregation of the aircraft using approach procedures in instrument conditions from other aircraft operating under visual weather conditions in controlled airspace.

EFFECTIVE DATE: 0901 G.m.t., September 26, 1985.

FOR FURTHER INFORMATION CONTACT: Edward R. Heaps, Airspace, Procedures, and Automation Branch, Air Traffic Division, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694–7360.

SUPPLEMENTARY INFORMATION: The current description of the Shell Lake, Wisconsin, transition area indentifies a "bearing to" in lieu of a "bearing from" the Shell Lake NDB (SSQ) and, as a result, does not properly describe the airspace required for the Shell Lake NDB Runway 31 instrument procedure. This action reduces the radius of the designated airspace area from 6.5 to 5 miles around Shell Lake Municipal Airport, eliminates the northwest extension, and designates the necessary southeast extension from the 5-mile radius to 8.5 miles southeast of the Shell Lake NDB.

Aeronautical maps and charts will reflect the defined area which will enable other aircraft to circumnavigate the area in order to comply with applicable visual flight rule requirements.

History

On Tuesday, April 30, 1985, the Federal Aviation Administration (FAA) proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the Shell Lake, Wisconsin, transition area (49 FR 18271).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6 dated January 2, 1985.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations alters the Shell Lake, Wisconsin, transition area to accommodate the existing Shell Lake NDB Runway 31 standard instrument approach procedure.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) proposes to amend Part 71 of the FAR (14 CFR Part 71) as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); (14 CFR 11.65 for NPRMs and 11.69 for final rule); 49 CFR 1.47.

2. By amending § 71.181 as follows:

§ 71.181 [Amended]

Shell Lake, WI

That airspace extending upward from 700 feet above the surface within a 5-mile radius of the Shell Lake Minicipal Airport (latitude 45°43'48" N., longitude 91°55'14" W.) and within 3 miles each side of the 139° bearing from the Shell Lake NDB (latitude 45°43'55" N., longitude 91°55'05" W.) extending from the 5-mile radius to 8.5 miles southeast of the Shell Lake NDB.

Issued in Des Plaines, Illinois, on June 26, 1985.

Paul K. Bohr,

Director, Great Lakes Region.

[FR Doc. 85–16202 Filed 7–8–85; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 97

[Docket No. 24707; Amdt. No. 1298]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable

airspace and to promote safe flight operations under instrument flight rules at the affected airports.

EFFECTIVE DATE: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference— Approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, D.C. 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-430), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, D.C. 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

FOR FURTHER INFORMATION CONTACT: Donald K. Funai, Flight Procedures Standards Branch (AFO-230), Air Transportation Division, Office of Flight Operations, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 426-8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 97 of the Federal Aviation Regulations (14 CFR Part 97) prescribes new, amended, suspended, or revoked Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR Part 51, and § 97.20 of the Federal Aviation Regulations (FARs). The applicable FAA Forms are identified as FAA Forms 8260-3, 8260-4, and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The Large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form document is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to Part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs is unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects 14 CFR Part 97

Approaches, Aviation safety, Standard instrument.

Issued in Washington, D.C. on June 28, 1985.

John S. Kern,

Acting Director of Flight Operations.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 97 of the Federal Aviation Regulations (14 CFR Part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 G.M.T. on the dates specified, as follows:

1. The authority citation for Part 97 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354(a), 1421, and 1510; 49 U.S.C. 106(g) (revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.49(b)(2).

2. By Amending § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TRACAN SIAPs identified as follows:

* * * *Effective September 26, 1985*

Honolulu, HI—Honolulu Intl, VOR or TACAN Rwy 4R, Orig.
Honolulu, HI—Honolulu Intl, VOR or TACAN Rwy 8L, Orig., cancelled
Honolulu, HI—Honolulu Intl, VOR or TACAN Rwy 8R, Amdt. 1 cancelled
Honolulu, HI—Honolulu Intl, VOR or TACAN-A, Orig.
Honolulu, HI—Honolulu Intl, VOR/DME or TACAN-B, Orig.
Kahului, HI—Kahului, VOR/DME or TACAN-A, Amdt. 4
Kamuakakai, Molokai, HI—Molokai, VOR or TACAN-A, Amdt. 11
Lanai City, HI—Lanai, VOR or TACAN Rwy 3, Amdt. 3
Lanai City, HI—Lanai, VOR or TACAN-A, Amdt. 7

* * * *Effective August 29, 1985*

Jackson, MI—Jackson County-Reynolds Field, VOR Rwy 6, Amdt. 15
Jackson, MI—Jackson County-Reynolds Field, VOR Rwy 14, Amdt. 14
Jackson, MI—Jackson County-Reynolds Field, VOR Rwy 24, Amdt. 17
Jackson, MI—Jackson County-Reynolds Field, VOR Rwy 32, Amdt. 13
Janesville, WI—Rock County, VOR Rwy 4, Amdt. 24
Janesville, MI—Rock County, VOR/DME Rwy 22 (TAC), Amdt. 2
Manitowoc, WI—Manitowoc County, VOR Rwy 17, Amdt. 10
Manitowoc, WI—Manitowoc County, VOR Rwy 35, Amdt. 9

* * * *Effective August 15, 1985*

Selma, AL—Craig Field, VOR Rwy 32, Amdt. 2
Tallahassee/Havana, FL—Tallahassee Commercial, VOR-A, Amdt. 4
Bloomington, IN—Monroe County, VOR Rwy 6, Amdt. 14
Bloomington, IN—Monroe County, VOR Rwy 17, Amdt. 9
Bloomington, IN—Monroe County, VOR Rwy 24, Amdt. 8
Bloomington, IN—Monroe County, VOR Rwy 35, Amdt. 11
Manteo, NC—Dare County Regional, VOR Rwy 16, Amdt. 1

* * * *Effective August 1, 1985*

Saginaw, MI—Tri County, VOR Rwy 5, Amdt. 14
Saginaw, MI—Tri County, VOR Rwy 14, Amdt. 13
Saginaw, MI—Tri County, VOR Rwy 23, Amdt. 14
Saginaw, MI—Tri County, VOR Rwy 32, Amdt. 9

* * * *Effective June 24, 1985*

Shreveport, LA—Shreveport Downtown, VOR Rwy 14, Amdt. 13

The FAA published an Amendment in Docket No. 24669, Amdt. No. 1296 to part 97 of the Federal Aviation Regulations (VOL 50 FR No. 117 Page 25211; dated Tuesday, June 18, 1985) under Section 97.23 effective July 18, 1985, which is hereby amended as follows:

Sioux Falls, SD—Joe Foss Field., VOR or TACAN Rwy 33, Admt. 7, changed to:
Sioux Falls, SD—Joe Foss Field., VOR/DME or TACAN Rwy 33, Admt. 7

3. By amending § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, and SDF/DME SIAPs identified as follows:

* * * *Effective Sepember 26, 1985*

Honolulu, HI—Honolulu Intl, LDA/DME Rwy 26L, Amdt. 4
Kahului, HI—Kahului, LOC/DME (BC) Rwy 20, Amdt. 8

* * * *Effective August 15, 1985*

Marshfield, WI—Marshfield Muni, SDF Rwy 34, Amdt. 4

* * * *Effective June 24, 1985*

Shreveport, LA—Shreveport Downtown, LOC Rwy 14, Amdt. 3

4. By amending § 97.27 NDB and NFB/DME SIAPs identified as follows:

* * * *Effective September 26, 1985*

Honolulu, HI—Honolulu Intl, NDB Rwy 8L, Amdt. 17

* * * *Effective August 29, 1985*

Marysville, KS—Marysville Muni, NDB Rwy 33, Amdt. 2
Jackson, MI—Jackson County-Reynolds Field., NDB Rwy 24, Amdt. 10

* * * *Effective August 15, 1985*

Bloomington, IN—Monroe County, NDB Rwy 35, Amdt. 3
Manteo, NC—Dare County Regional, NDB Rwy 4, Amdt. 2
Manteo, NC—Dare County Regional, NDB Rwy 16, Amdt. 2
Hemingway, SC—Hemingway-Stuckey, NDB Rwy 11, Amdt. 2
Kingstree, SC—Williamsburg County, NDB Rwy 14, Amdt. 2
Manning, SC—Clarendon County, NDB Rwy 1, Amdt. 1
Moncks Corner, SC—Berkeley County, NDB Rwy 5, Amdt. 1
Madisonville, TN—Monroe County, NDB Rwy 5, Amdt. 2
McMinnville, TN—Warren County Memorial, NDB Rwy 5, Amdt. 4
McMinnville, TN—Warren County Memorial, NDB Rwy 23, Amdt. 4
Morrisville, VT—Morrisville-Stowe State, NDB-B, Orig.
Marshfield, WI—Marshfield Muni, NDB Rwy 4, Amdt. 12
Marshfield, WI—Marshfield Municipal, NDB Rwy 16, Amdt. 8

* * * *Effective August 1, 1985*

Monticello, IA—Monticello Muni, NDB-A, Amdt. 2
Saginaw, MI—Tri City, NDB Rwy 5, Amdt. 8

5. By amending § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME and MLS/RNAV SIAPs identified as follows:

* * * *Effective September 26, 1985*

Honolulu, HI—Honolulu Intl, ILS Rwy 4R, Amdt. 10
Honolulu, HI—Honolulu Intl, ILS Rwy 8L, Amdt. 19

* * * *Effective August 29, 1985*

Jackson, MI—Jackson County-Reynolds Field, ILS Rwy 24, Amdt. 10
Janesville, WI—Rock County, ILS Rwy 4, Amdt. 8

* * * *Effective August 15, 1985*

Bloomington, IN—Monroe County, ILS Rwy 35, Amdt. 3
Minot, ND—Minot Intl, ILS Rwy 31, Amdt. 7

* * * *Effective August 1, 1985*

Saginaw, MI—Tri City, ILS Rwy 5, Amdt. 10
Saginaw, MI—Tri City, ILS Rwy 23, Amdt. 1

* * * *Effective June 21, 1985*

Coatesville, PA—Chester County G.O. Carlson, ILS Rwy 29, Amdt. 3

* * * *Effective June 13, 1985*

Niagara Falls, NY—Niagara Falls Intl, ILS Rwy 28R, Amdt. 21

6. By amending § 97.31 RADAR SIAPs identified as follows:

* * * *Effective August 1, 1985*

Saginaw, MI—Tri City, RADAR-1, Amdt. 9

7. By amending § 97.33 RNAV SIAPs identified as follows:

* * * *Effective August 1, 1985*

Monticello, IA—Monticello Muni, RNAV Rwy 31, Orig.

[FR Doc. 85-16332 Filed 7-8-85; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 703

Rule on Informal Dispute Settlement Procedures

AGENCY: Federal Trade Commission.

ACTION: Final approval of exemption.

SUMMARY: The Commission has given final approval to its tentative grant of a limited exemption from the Rule on Informal Dispute Settlement Procedures, 16 CFR Part 703 (Rule 703), to the Ford Consumer Appeals Board (FCAB) program. The exemption, which is for a two-year trial period, extends the Rule's 40-day time limit for arbitration decisions to 60 days. This extension allows the FCAB program to use mediation prior to arbitration as part of its dispute resolution procedure.

DATE: Final approval of the exemption was granted on June 13, 1985.

FOR FURTHER INFORMATION CONTACT: David W. Koch, Federal Trade Commission, 6th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580, (202) 523-3911.

SUPPLEMENTARY INFORMATION: The Commission has decided to grant a limited exemption from Rule 703, for a two-year trial period, to the Ford Consumer Appeals Board (FCAB) program. The exemption extends the Rule's time limit for arbitration decisions from 40 days to 60 days. This extension will allow the FCAB up to 20 days to pursue mediation prior to conducting arbitration. The Commission has placed the following conditions on the exemption:

1. Consumers are not required to participate in mediation. Consumers may terminate mediation before the process begins or at any time during the process and still obtain a decision from the mechanism.

2. Upon notification from the consumer that he or she elects to cease mediation and start the arbitration process, the mechanism must render a decision within 40 days of such notification or within 60 days of the date the mechanism first received notification of the dispute, whichever is less.

3. The procedures required by conditions 1 and 2 must be disclosed clearly and conspicuously to the consumer after the mechanism has received notice of the dispute and prior to beginning the mediation process.

The Commission published a notice in the **Federal Register** (49 FR 28411, July 12, 1984) announcing its tentative decision to grant the exemption with

conditions and seeking comments on whether this exemption and the conditions are appropriate. No comments were received in response to this notice.

The grant of this limited exemption does not require Ford to modify its existing warranty to state that the FCAB is permitted to complete arbitrations within the time frame set forth in the exemption, rather than the 40-day period set forth in rule 703. However, in accordance with condition 3, the 20-day period for mediation and the consumer's right to decline to take part in mediation must be disclosed to consumers after the FCAB has received notice of the dispute and before the mediation process begins. This method of disclosure recognizes that requiring Ford to amend its warranty in order to take advantage of the exemption would effectively nullify the exemption. Moreover, the consumer's option to reject mediation and demand an arbitration decision within 40 days negates the necessity of amending the underlying warranty documents.

The Commission believes mediation to be an effective and relatively inexpensive method of resolving disputes. For that reason, the Commission believes that it is in the public interest to grant this exemption in order to encourage further use of mediation processes.

By direction of the Commission.

Emily H. Rock,

Secretary

[FR Doc. 85-16148 Filed 7-8-85; 8:45 am]

BILLING CODE 8750-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 239, 240, 249, 270 and 274

[Release Nos. 33-6591; 34-22194; IC-14606; File Nos. S7-1-85; S7-2-85]

Withdrawal of Quarterly Reporting Forms and Filing Obligations of Certain Registered Investment Companies of; Incorporation Quarterly Reporting Obligations in Form N-SAR; Adoption of Conforming Amendments to Registration Forms; Related Rule Amendments

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission is rescinding the quarterly reporting obligations of certain registered investment companies and incorporating them into form N-SAR, the semi-annual reporting form for such companies. The Commission is also adopting amendments to the instructions of the registration statement forms for open-end and closed-end investment companies which change the way in which registrants calculate their portfolio turnover rate to conform to the method used in calculating that rate in their semi-annual reports. In addition, the Commission is adopting certain technical amendments to delete references to the quarterly reporting obligations of certain registered investment companies and to provide references to form N-SAR where appropriate.

EFFECTIVE DATE: August 8, 1985.

FOR FURTHER INFORMATION CONTACT: William C. Gibbs, Attorney, Office of Regulatory Policy, (202) 272-2048; or Elizabeth M. Knoblock, Special Counsel, Office of Regulatory Policy, (202) 272-2048.

SUPPLEMENTARY INFORMATION: The Commission is incorporating the contents of form N-1Q [17 CFR 274.1061], the quarterly report form for registered investment companies, into form N-SAR [17 CFR 274.101], the semi-annual report form for registered investment companies, as items 77 and 102 and withdrawing form N-1Q. The Commission is also withdrawing form N-27D-2 [17 CFR 274.127d-2], the quarterly report form for issuers of periodic payment plan certificates. In addition, the Commission is rescinding rules 13a-12 [17 CFR 240.13a-12] and 15d-12 [17 CFR 240. 15d-12] under the Securities Exchange Act of 1934 [15 U.S.C. 78a *et seq.*] ("1934 Act"), and rules 27d-3 [17 CFR 270.27d-3], 30b1-1 [17 CFR 270.30b1-1] and 30b1-2 [17 CFR 270.30b1-2] under the Investment Company Act of 1940 [15 U.S.C. 80a-1 *et seq.*] ("1940 Act"), which require the filing of forms N-1Q or N-27D-2. Temporary rules 30b1-5(T) [17 CFR 270.30b1-5(T)] and 27d-4(T) [17 CFR 270.27d-4(T)] under the 1940 Act, which temporarily suspended those quarterly reporting obligations, are also rescinded and rules 30b1-3 [17 CFR 270.301-3] and 30b1-4 [17 CFR 270.30b1-4], which require the filing of semi-annual reports, are redesignated as rules 30b1-1 and 30b1-2. Rules 2a-7 [17 CFR 270.2a-7] and 10f-3 [17 CFR 270.10f-3] under the 1940 Act are amended to replace references to form N-1Q with references to form N-SAR. Similarly, rules 13a-11 [17 CFR 240.13a-11], 13a-13 [17 CFR 240.13a-13], 13a-16 [17 CFR 240.13a-16], 15d-11 [17 CFR 240.15d-11] 15d-13 [17 CFR 240.15d-13] and 15d-16 [17 CFR 240.15d-16] under the 1934 Act are revised to eliminate references to the withdrawn reporting form.

The Commission is also adopting amendments to instruction 12 to item 3 of form N-1A [17 CFR 239.15A], the registration statement of open-end management investment companies and instruction 12 to item 3 of form N-12 [17 CFR 239.14], the registration statement for closed-end management investment companies. The amendments to forms N-1A and N-2 are intended to conform the manner in which registrants are required to calculate their portfolio turnover rate to the manner prescribed in the instructions to item 71 of form N-SAR. Although the standardized calculation of portfolio turnover rate will not be required until thirty days after publication, investment companies filing forms N-1A and N-2 in the interim may use that method.

Discussion

The Commission recently adopted form N-SAR,[1] a new semi-annual reporting form for registered investment companies. Upon consideration of a commentator's suggestion,[2] the Commission temporarily incorporated the contents of form N-1Q, the quarterly report form of registered management investment companies, into items 77 and 102 of form N-SAR and proposed for public comment the withdrawal of form N-1Q. The Commission also temporarily suspended the obligation of investment companies to file quarterly reports on forms N-1Q and N-27D-2 by adopting two temporary rules. Rule 30b1-5(T) suspended the obligation to file form N-1Q. Similarly, rule 27d-4(T) suspended the reporting requirements of form N-27D-2. The Commission also proposed the withdrawal of form N-27D-2, the quarterly report form for certain face-amount certificate companies.

In a separate release, the Commission also proposed amending the instructions for calculating portfolio turnover rate in item 3 of forms N-1A and N-2 to conform to the manner in which it is calculated in form N-SAR.[3] In response to the two proposals, the Commission received three comment letters: one favoring the incorporation of form N-1Q into form N-SAR, the other two discussing the conforming amendments. This release addresses the two

[1] Investment Company Act Release No. 14238, January 4, 1985, 50 FR 1442.

[2] That commentator described form N-1Q as "unwieldy," "expensive," and "time-consuming," and urged the Commission to withdraw the form and incorporate any necessary items into form N-SAR. *Id.* at 1445.

[3] Investment Company Act Release No. 14300, January 4, 1985, 50 FR 1542.

proposals and the comments received thereon separately, first addressing the proposed incorporation of form N-1Q into form N-SAR.

Incorporation of Form N-1Q into Form N-SAR

The Commission has decided to incorporate form N-1Q as set forth in items 77 and 102 and the accompanying instructions in form N-SAR, permanently. The one commentator which commented on the incorporation of form N-1Q into form N-SAR supported such incorporation and stated that it would relieve investment companies of an unnecessary and duplicative filing requirement.[4] The Commission has also added to items 77 and 102 three sub-items with accompanying instructions. Those sub-items require reporting of any transactions to be reported pursuant to rule 2a-7 [17 CFR 270.2a-7] (items 77N and 102M), transactions effected pursuant to rule 10f-3 [17 CFR 270.10f-3] (sub-items 770 and 102N), and any information required to be filed pursuant to an exemptive order (items 77P and 1020).[5]

The Commission is also withdrawing forms N-1Q and N-27D-2. As a result of withdrawing those forms, the Commission is rescinding rules 27d-3, 30b1-1, 30b1-2, 30b1-5(T) and 27d-4(T) under the 1940 Act relating to the quarterly reporting requirements for registered investment companies and redesignating rules 30b1-3 and 30b1-4 under the 1940 Act as rules 30b1-1 and 30b1-2. The Commission is also rescinding rules 13a-12 and 15d-12 under 1934 Act which prescribed the duty to file such quarterly reports. In addition, rules 2a-7 and 10f-3 under the 1940 Act are amended to insert references to form N-SAR in place of existing references to form N-1Q and under 13a-11, 13a-13, 13a-16, 15d-11, 15d-13 and 15d-16 under the 1934 Act are revised to eliminate references to the withdrawn reporting forms.

Conforming the Calculation of Portfolio Turnover Rate in Forms N-1A and N-2 With Form N-SAR

The Commission proposed amendments to the instructions for forms N-1A and N-2, the registration statements for open-end and closed-end investment companies, to conform the method of calculating a registrant's portfolio turnover rate with the method prescribed in form N-SAR. Two comments were received on that proposal.

One commentator supported the Commission's action, stating that it will reduce the administrative burden on investment companies and provide more coherent reporting to investors. However, the commentator noted that certain per share tables required by the affected item of both forms N-1A and N-2 must be presented for a period of up to ten years and that it was unclear from the proposing release whether the Commission intended to require investment companies to recalculate the portfolio tunover rate data for previous years to make the presentation of that data consistent for the entire period.

The Commission does not believe that a *pro forma* restatement of the portfolio turnover rate as set forth in the per share tables should be mandatory. Thus, a new subsection (e) has been added to instruction 12 of item 3 in both forms which provides that if the portfolio turnover rate for periods prior to 1985 is not calculated in the same manner as now required, a footnote to that item should so state.

The other commentator proposed an alternative method for calculating the portfolio turnover rate.[6] However, the Commission is adopting the method originally proposed. The calculation of the portfolio turnover rate as set forth in form N-SAR, and now adopted in forms N-1A and N-2, was developed to allow the Commission and investors to monitor the dollar value movement of investments through an investment company's portfolio. This gives the Commission and investors important information on the rate at which securities are replaced in the portfolio and the consequent dealer spreads or commissions involved in a fund's purchase or sale of such securities. In addition, since all investment companies are required to report the portfolio turnover rate in the same manner on all forms filed with the Commission, investors can make a meaningful comparison of portfolio turnover rates among the various investment companies.

List of Subjects in 17 CFR Parts 239, 240, 249, 270 and 274

Investment companies, Reporting and recordkeeping requirements, Securities.

Statutory Basis and Text of Form and Rule Amendments

Forms N-2 and N-1A are amended pursuant to the authority granted the Commission in sections 7, 10 and 19 of the Securities Act of 1933 [15 U.S.C. 77g, 77j and 77s] and sections 8, 30, and 38 of the Investment Company Act of 1940 [15 U.S.C. 80a-8, 29, 37]. Forms N-1Q and N-27D-2 are withdrawn, rules 13a-12, 15d-12, 27d-3, 30b1-1, 30b1-2, 30b1-5(T) and 27d-4(T) are rescinded and rules 13a-13, 13a-16, 15d-13 and 15d-16 are revised pursuant to sections 13, 15(d) and 23(a) of the Securities Exchange Act of 1934 [15 U.S.C. 78m, 78o(d) and 78w(a)] and sections 8, 30 and 38 of the Investment Company Act of 1940 [15 U.S.C. 80a-8, 29, 37]. Rules 2a-7 and 10f-3 are revised pursuant to sections 80a-2, 10 and 38 of the Investment Company Act of 1940 [15 U.S.C. 2, 10, and 37].

Parts 239, 240, 249, 270 and 274 of Chapter II, Title 17 of the Code of Federal Regulations are amended as set forth below:

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

1. The authority citation for Part 239 continues to read, in part, as follows:

Authority: The Securities Exchange Act of 1933, 15 U.S.C. 77a, *et seq.*, * * *

2. The authority citation for Part 274 continues to read, in part, as follows:

Authority: The Investment Company Act of 1940, 15 U.S.C. 80a-1, *et seq.*, * * *

3. By revising paragraphs b. and d. and by adding paragraph e. in instruction 12 to item 3 of form N-2 described in §§ 239.14 and 274.11a-1 to read as follows:

§ 239.14 Form N-2 for closed-end management investment companies registered on Form N-8A.

§ 274.11a-1 Form N-2, registration statement of closed-end management investment companies.

* * * * *

[4] The commentator noted, however, that the filing of reports regarding transactions effected pursuant to rule 10f-3 [17 CFR 270.10f-3] under the 1940 Act has been omitted from the form.

[5] Previously, both rules 2a-7 and 10f-3 required all transactions effected pursuant to those rules to be reported on form N-1Q. While the commentator discussed only rule 10f-3, the Commission believes all information previously required to be filed on form N-1Q, including information required to be filed by exemptive order, should be filed on form N-SAR.

[6] The Commission adopted, in form N-SAR, a portfolio turnover rate calculation which excludes from both the numerator and the denominator all short-term securities and includes all long-term securities, even U.S. Government long-term securities. While the commentator did not object to the exclusion of short-term securities from the numerator, he believed that excluding short-term securities from the denominator was misleading and suggested using "average total assests" as the divisor. However, that figure would not measure portfolio turnover because include other non-portfolio data such as cash, receivables and pre-paid expenses. The Commission believes that to exclude short-term securities from the numerator and not exclude them from the denominator would result in a misleading portfolio turnover rate.

Item 3. *Condensed Financial Information* (Prospectus *only*).

(a) Furnish the following information for the Registrant, or for the Registrant and its subsidiaries consolidated as prescribed in rule 6-03 [17 CFR 210.6-03] of Regulation S-X:

* * * * *

Instructions

* * * * *

12. The portfolio turnover rate to be shown at caption 12 shall be calculated in accordance with the following instructions:

a. * * *

b. For purposes of this Item, there shall be excluded from both the numerator and denominator all securities, including options, whose maturity or expiration date at the time of acquisition were one year or less. All long-term securities, including long-term U.S. Government securities, should be included. Purchases shall include any cash paid upon the conversion of one portfolio security into another. Purchases shall also include the cost of rights or warrants purchased. Sales shall include the net proceeds from the sales of rights or warrants. Sales shall also include the net proceeds of portfolio securities which have been called, or for which payment has been made through redemption or maturity.

c. * * *

d. Short sales which the registrant intends to maintain for more than one year and put and call options where the expiration date is more than one year from the date of acquisition should be included in purchases and sales for purposes of this Item. The proceeds from a short sale should be included in the value of the portfolio securities which the registrant sold during the reporting period and the cost of covering a short sale should be included in the value of the portfolio securities which the registrant purchased during the period. The premiums paid to purchase options should be included in the value of the portfolio securities which the registrant purchased during the reporting period and the premiums received from the sale of options should be included in the value of the portfolio securities which the registrant sold during the period.

e. If periods prior to 1985 are not calculated on the same basis as that required above, a footnote to this item should so state.

* * * * *

4. By revising paragraphs b. and d. and by adding paragraphs e. in instruction 12 to item 3 of form N-1A described in §§ 239.15A and 274.11A to read as follows:

§ 239.15A Form N-1A, registration statement of open-end management investment companies.

§ 274.11A Form N-1A, registration statement of open-end management investment companies.

* * * * *

Item 3. *Condensed Financial Information.*

(a) Furnish the following information for the Registrant, or for the Registrant and its subsidiaries consolidated as prescribed in rule 6-03 [17 CFR 210.6-03] of Regulation S-X.

* * * * *

Instructions

* * * * *

12. The portfolio turnover rate to be shown at caption 12 shall be calculated in accordance with the following instructions:

a. * * *

b. For purposes of this Item, there shall be excluded from both the numerator and denominator all securities, including options, whose maturity or expiration date at the time of acquisition were one year or less. All long-term securities, including long-term U.S. Government securities, should be included. Purchases shall include any cash paid upon the conversion of one portfolio security into another. Purchases shall also include the cost of rights or warrants purchased. Sales shall include the net proceeds from the sale of rights or warrants. Sales shall also include the net proceeds of portfolio securities which have been called, or for which payment has been made through redemption or maturity.

c. * * *

d. Short sales which the registrant intends to maintain for more than one year and put and call options where the expiration date is more than one year from the date of acquisition are included in purchases and sales for purposes of this Item. The proceeds from a short sale should be included in the value of the portfolio securities which the registrant sold during the reporting period and the cost of covering a short sale should be included in the value of the portfolio securities which the registrant purchased during the period. The premiums paid to purchase options should be included in the value of the portfolio securities which the registrant purchased during the reporting period and the premiums received from the sale of options should be included in the value of the portfolio securities which the registrant sold during the period.

e. If periods prior to 1985 are not calculated on the same basis as that required above, a footnote to this item should so state.

* * * * *

PART 240—RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

5. The authority citation for Part 240 continues to read, in part, as follows:

Authority: Sec. 23 as amended, 15 U.S.C. 78w, * * *

6. By revising paragraph (b) of § 240.13a-11 to read as follows:

§ 240.13a-11 [Amended]

* * * * *

(b) This section shall not apply to foreign governments, foreign private issuers required to make reports on Form 6-K (17 CFR 249.306) pursuant to Rule 13a-16 (17 CFR 240.13a-16), issuers of American Depositary Receipts for securities of any foreign issuer, or investment companies required to file reports pursuant to Rule 30b-1-1 (17 CFR 270.30b1-1) under the Investment Company Act of 1940.

§ 240.13a-12 [Removed]

7. By removing § 240.13a-12.

8. By revising paragraph (b)(1) of § 240.13a-13 to read as follows:

§ 240.13a-13 [Amended]

* * * * *

(b) * * *

(1) Investment companies required to file reports pursuant to § 270.30b1-1;

* * * * *

9. By revising paragraph (a)(1) of § 240.13a-16 to read as follows:

§ 240.13a-16 [Amended]

(a) * * *

(1) Investment companies required to file reports pursuant to Rule 30b1-1 [17 CFR 270.30b1-1];

* * * * *

10. By revising paragraph (b) of § 240.15d-11 to read as follows:

§ 240.15d-11 [Amended]

* * * * *

(b) This rule shall not apply to foreign governments, foreign private issuers required to make reports on Form 6-K (17 CFR 249.306) pursuant to Rule 15d-16 (17 CFR 240.15d-16), issuers of American depositary receipts for securities of any foreign issuer, or investment companies required to file periodic reports pursuant to Rule 30b1-1 (17 CFR 270.30b1-1) under the Investment Company Act of 1940.

§ 240.15d-12 [Removed]

11. By removing § 240.15d-12.

12. By revising paragraph (b)(1) of § 240.15d-13 to read as follows:

§ 240.15d-13 [Amended]

* * * * *

(b) * * *

(1) Investment companies required to file reports pursuant to § 270.30b1-1;

* * * * *

13. By revising paragraph (a)(1) of § 240.15d-16 to read as follows:

§ 240.15d-16 [Amended]

(a) * * *

(1) Investment companies required to file reports pursuant to Rule 30b1-1 [17 CFR 270.30b1-1];

* * * * *

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

14. The authority citation for Part 249 continues to read, in part, as follows:

Authority: The Securities Exchange Act of 1934, 15 U.S.C. 78a, *et seq.*, * * *

15. By revising form N–SAR, described in §§ 249.330 and 274.101, by redesignating items 77N and 102M and the instructions thereto as items 77Q and 102P, respectively, and by adding items 77N, 77O, 77P, 102M, 102N and 1020 and corresponding instructions as follows:

§ 249.330 Form N–SAR, semi-annual report of registered investment companies.

§ 274.101 Form N–SAR, semi-annual report of registered investment companies.

* * * * *

Item 77. * * *

N. Actions required to be reported pursuant to Rule 2a–7..... ☐
O. Transactions effected pursuant to Rule 10f–3..... ☐
P. Information required to be filed with the registrant's periodic reports pursuant to existing exemptive orders..... ☐
Q. Exhibits..... ☐

* * * * *

Item 102. * * *

M. Actions required to be reported to Rule 2a–7..... ☐
N. Transactions effected pursuant to Rule 10f–3..... ☐
O. Information required to be filed with the registrant's periodic reports pursuant to existing exemptive orders..... ☐
P. Exhibits..... ☐

* * * * *

General Instructions

* * * * *

Sub-item 77N: Actions required to be reported pursuant to Rule 2a–7.

A Registrant relying on Rule 2a–7 [17 CFR 270.2a–7] to use the amortized cost method of valuation is required by paragraph (a)(2)(vi) of that rule to report any action taken by the board of directors to eliminate or reduce any material dilution or other unfair results to investors caused by a deviation from the fund's amortized cost price per share that exceeds ½ of 1 percent. If any such action was taken during the reporting period, this item should be checked and an exhibit attached, describing with specificity the nature and circumstances of such action.

Sub-item 77O: Transactions effected pursuant to Rule 10f–3.

Rule 10f–3 [17 CFR 270.10f–3] provides a limited exemption from section 10(f) of the Act, provided, *inter alia*, that all transactions effected pursuant to the rule are reported on form N–SAR. If any such transactions were effected during the reporting period, this item should be checked and an exhibit attached setting forth from whom the securities were acquired, the identity of the underwriting syndicate's members, the terms of the transaction, and the information of materials upon which the determination described in paragraph (h)(3) of rule 10f–3 was made.

Sub-item 77P: Information required to be filed with the registrant's periodic reports pursuant to existing exemptive orders.

If any actions were taken during the reporting period which were required to be reported on Form N–1Q pursuant to an exemptive order, that information must now be reported in this sub-item of Form N–SAR.

Sub-item 77Q: Exhibits.

In addition to the materials provided pursuant to sub-items 77C through 77P, if any, and subject to Rule 201.24 of the General Rules of Practice regarding incorporation by reference, the following exhibits shall be filed as part of this form, if not previously filed:

* * * * *

Sub-item 102M: Information required to be reported pursuant to Rule 2a–7.

See instructions to sub-item 77N.

Sub-item 102N: Transactions effected pursuant to Rule 10f–3.

See instructions to sub-item 770.

Sub-item 1020: Information required to be filed with the registrant's periodic reports pursuant to existing exemptive orders.

See instructions to sub-item 77P.

Sub-item 102P: Exhibits.

In addition to the materials provided pursuant to sub-items 102B through 1020, if any, and subject to Rule 201.24 of the General Rules of Practice regarding incorporation by reference, the following exhibits shall be filed as part of Form N–SAR, if not previously filed:

* * * * *

§ 249.331 [Removed]

16. By removing § 249.331.

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

17. The authority citation for Part 270 continues to read, in part, as follows:

Authority: Secs. 38, 40; 15 U.S.C. 80a–37

* * *

18. By revising paragraph (a)(2)(vi) of § 270.2a–7 to read as follows:

§ 270.2a–7 [Amended]

(a) * * *

(2) * * *

(vi) If any action was taken pursuant to paragraph (a)(2)(ii)(C) of this section, the money market fund will report such action on Form N–SAR [17 CFR 274.101] covering the period in which the action was taken and attach a statement to the form describing with specificity the nature and circumstances of such action; or

* * * * *

19. By revising paragraph (g) of § 270.10f–3 to read:

§ 270.10f–3 [Amended]

* * * * *

(g) The existence of any transactions effected pursuant to this rule shall be reported on the Form N–SAR [17 CFR 274.101] of the investment company and a written record of each such transaction, setting forth from whom the securities were acquired, the identity of the underwriting syndicate's members, the terms of the transaction, and the information or materials upon which the determination described in paragraph (h)(3) of rule 10f–3 was made shall be attached thereto;

* * * * *

20. By removing §§ 270.27d–3, 270.27d–4(T), 270.30b1–1, 270.30b1–2 and 270.30b1–5(T).

21. By redesignating §§ 270.30b1–3 and 270.30b1–4 as 270.30b1–1 and 270.30b1–2, respectively.

Final Regulatory Flexibility Analysis

In accordance with 5 U.S.C. 604, the Commission has prepared a Final Regulatory Flexibility Analysis with regard to the rescission of rules 27d–4(T) and 30b1–5(T) and the withdrawal of forms N–1Q and N–27D–2. A summary of the corresponding Initial Regulatory Flexibility Analysis was included in the release proposing the rule at 50 FR 1442 (January 11, 1985). Anyone who wishes to obtain a copy of the Final Regulatory Flexibility Analysis should contact William C. Gibbs in the manner specified above.

Pursuant to 5 U.S.C. 605(b), the Chairman of the Commission previously certified that the proposed amendments to forms N–2 and N–1A will not have a significant economic impact on a substantial number of small entities. No comments were received on that certification.

Dated: July 1, 1985.

By the Commission.

John Wheeler,

Secretary.

[FR Doc. 85–16247 Filed 7–8–85; 8:45 am]

BILLING CODE 8010–01–M

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17 CFR Part 240

[Release No. 22172; File No. S7–19–84]

Persons Deemed Not To Be Brokers

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission is adopting Rule 3a4–1 specifying a non-exclusive safe harbor under which persons associated with an issuer of securities who participate in sales of that issuer's securities will not be considered to be acting as "brokers" as that term is defined in the Securities Exchange Act of 1934. Accordingly, these persons would not be required to register with the Commission pursuant to Section 15 of that Act. The Commission is adopting the Rule in order to provide guidance concerning the applicability of the

broker-dealer registration requirement in situations where an issuer chooses to sell its securities through its associated persons.

EFFECTIVE DATE: Rule 3a4–1 will become effective July 9, 1985.

FOR FURTHER INFORMATION CONTACT: Susan J. Walters, Esq., (202) 272–2848, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Commission today announced the adoption of Rule 3a4–1 (17 CFR 240.3a4–1) under the Securities Exchange Act of 1934 (the "Act").[1] Rule 3a4–1 was most recently proposed for public comment in May, 1984.[2] The Rule provides a non-exclusive safe harbor from the broker-dealer registration provisions of the Act for certain associated persons of issuers. The Rule specifies that an associated person of an issuer must meet three preliminary conditions and any one of three alternative conditions in order to take advantage of the safe harbor.

As stated in the 1984 Release, a person acting on behalf of an issuer in buying or selling that issuer's securities may, depending upon the circumstances, be a broker within the meaning of the Act. The term "broker," as defined in section 3(a)(4) of the Act, generally includes any person engaged in the business of effecting transactions in securities for the account of others. Section 15(a) of the Act requires broker-dealers to register with the Commission unless an exemption is available and comply with applicable provisions of the securities laws.[3]

Questions concerning the need for broker-dealer registration frequently have arisen when an issuer proposes to sell its securities through its officers, partners or employees rather than incurring the costs of employing the services of a registered broker-dealer. The staff has historically responded to these questions by providing interpretive advice or issuing no-action letters. The Commission believes that a safe harbor rule is an appropriate and efficient way to provide guidance in this area.

Commentators generally supported adoption of the proposed Rule. In particular, they noted that the Rule would be useful in clarifying an aspect of broker-dealer registration. Upon review of the reproposed Rule and consideration of the comments received, the Commission has determined to adopt the Rule substantially as proposed, to make some clarifications as described in this Release and to adopt some suggested modifications to the Rule.[4]

The broker-dealer registration and associated regulatory requirements of the Act, as well as those of the self-regulatory organizations, provide important safeguards to investors. Investors are assured that registered broker-dealers and their associated persons have the requisite professional training and that they must conduct their business according to regulatory standards. Registered broker-dealers are subject to a comprehensive regulatory scheme designed to ensure that customers are treated fairly, that they receive adequate disclosure and that the broker-dealer is financially capable of transacting business. Exemptions from registration have traditionally been narrowly drawn in order to promote both investor protection and the integrity of the brokerage community. At the same time, however, the Commission recognizes that there are situations where imposition of the registration requirement would be inappropriate.

Compliance with the conditions to the safe harbor of Rule 3a4–1 is not the exclusive means by which associated persons of issuers may sell that issuer's securities without registration as broker-dealers. Accordingly, paragraph (b) of the Rule provides that no presumption shall arise that a person associated with an issuer has violated section 15(a) in connection with the sale of the issuer's securities if the conditions of the Rule are not met. The Commission recognizes that there may be other facts and circumstances that justify a conclusion that registration as a broker-dealer is not required even though all the conditions of the Rule have not been satisfied. The staff will continue to provide interpretive guidance to those whose activities are not clearly within the provisions of the Rule. Rule 3a4–1, however, does provide legal certainty to those persons whose activities meet the conditions of the Rule.

II. Rule 3a4–1

A. Scope of the Rule

Rule 3a4–1 provides a safe harbor from broker-dealers registration for associated persons of an issuer. The term "associated person of an issuer" is defined in paragraph (c)(1) of the Rule as any natural person who is a partner, officer, director or employee of the issuer, of a corporate general partner of a limited partnership that is the issuer or of a company or partnership that controls, is controlled by or under common control with the issuer.[5] The term "associated person of an issuer" includes certain persons affiliated with a corporate general partner of a partnership which is the issuer. These persons are included because most partnerships issuing securities are controlled solely by one or more corporate general partners. The Commission has concluded that in those circumstances where officers, directors, or employees of a corporation are engaged in the sale of securities issued by a limited partnership in which the corporation is a general partner, and the sales are conducted in a manner consistent with the limitations and restrictions set forth in Rule 3a4–1, such persons should not be deemed to be brokers. Similarly, the Commission believes that it is also appropriate to include employees of companies or partnerships in a control relationship with the issuer within the scope of the Rule.

The term "associated person of the issuer" also includes employees of an investment adviser to an issuer that is an investment company registered under the Investment Company Act of 1940. The investment adviser must be registered under the Investment Advisers Act of 1940. This part of the

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[1] 15 U.S.C. 78 *et seq.*

[2] Securities Exchange Act Release No. 20943 (May 9, 1984), 49 FR 20512 (May 15, 1984) ("1984 Release"). Rule 3a4–1 was initially proposed for public comment in Securities Exchange Act Release No. 13195 (Jan. 21, 1977), 42 FR 5084 (Jan. 27, 1977).

[3] Section 15(a)(1), 15 U.S.C. 78*o*(a)(1), provides that: [i]t shall be unlawful for any broker or dealer which is either a person other than a natural person or a natural person not associated with a broker or dealer which is a person other than a natural person (other than such a broker or dealer whose business is exclusively intrastate and who does not make use of any facility of a national securities exchange) to make use of . . . interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any security (other than an exempted security or commercial paper, bankers' acceptances, or commercial bills) unless such broker or dealer is registered in accordance with section 15(b) of the Act (15 U.S.C. 78*o*(b)).

[4] The Commission received eight comment letters regarding reproposed Rule 3a4–1. File No. S7–19–84 contains these public comment letters as well as a summary of comments prepared by the staff of the Commission.

[5] While Rule 3a4–1 focuses on the activities of natural persons, it also may have an impact on their employers. For example, if the employees of a corporate general partner sell securities of the issuer-limited partnership in compliance with Rule 3a4–1, neither the employees nor the corporate general partner would be required to register as a broker-dealer. However, where a corporate general partner, through its employees, sells the issuer-limited partnership's securities and pays the employees a sales commission, the corporate general partner is acting as a broker-dealer and must register as such. The employees would be associated persons of the broker-dealer.

definition of associated person reflects comments received on the original rule proposal and codifies the position taken by the staff in its no-action letters.[6] Several commentators on the 1984 Release questioned whether the definition should be further expanded to include third party affiliates of the investment adviser. The Commission believes any relief from the broker-dealer registration requirement for such third party affiliates is best handled through the no-action letter process on a case-by-case basis.

Paragraph (a)(3) of the Rule excludes associated persons of an issuer, who, at the time of their participation in the sale of the issuer's securities, are associated persons of a broker or dealer.[7] Paragraph (c)(2) of the Rule defines the term "associated person of a broker or dealer" as it is defined in section 3(a)(18) of the Act.[8] These persons have been excluded from the scope of the Rule for two reasons. First, integration of the brokerage activities performed by them in the course of their employment with the broker-dealer and the sales of securities effected on behalf of the issuer would lead to the conclusion that, in most circumstances, such persons would be brokers within the meaning of the Act. Second, the potential for abusive sales tactics or confusion of investors stemming from the dual affiliation of the associated person would appear to warrant regulatory supervision.[9]

Commentators on the original proposal suggested that the scope of the Rule should be expanded to cover attorneys, accountants, insurance brokers, financial service organizations, and financial consultants who for a fee assist promoters and other issuers in the sale of securities. One commentator on the reproposed Rule, however, stated that such "independent agents" should not have the protection of the safe harbor and should be required to register as broker-dealers. The Commission has concluded that it would not be appropriate to expand the scope of the Rule to cover such persons, although the staff of the Division of Market Regulation may provide interpretive advice on a case-by-case basis. Insofar as they are retained by an issuer specifically for the purpose of selling securities to the public and receive transaction-based compensation, these persons are engaged in the business of effecting transactions in securities for the account of others. Accordingly, these persons should register as broker-dealers.

The safe harbor of the Rule is available in the context of all sales of securities of the issuer by a person associated with that issuer in a transaction on behalf of that issuer. The term "sale," as used in paragraph (a) of the Rule, includes "any contract to sell or otherwise dispose of" securities and thus would include transactions that are part of any public or private offering.[10] The term "securities of the issuer" is intended to cover the issuer's sale of its own securities through its associated persons. The Rule does not address situations where an issuer's employees assist potential buyers and sellers in connection with secondary market transactions in the issuer's securities.[11]

B. The Preliminary Requirements Applicable to Associated Persons

Paragraph (a) of the Rule contains three preliminary conditions that must be met by associated persons in order to take advantage of the safe harbor. The associated person must not be subject to a statutory disqualification, must not receive, directly or indirectly, commissions or transaction-based compensation in connection with the sale of the issuer's securities, and must not be an associated person of a broker or dealer.

Paragraph (a)(1) specifies that the associated person may not be subject to a statutory disqualification, as that term is defined in section 3(a)(39) of the Act, at the time of his participation in the sale of the issuer's securities. In the 1984 Release, the Commission requested comments on whether the application of the statutory disqualification provision of the Rule should be narrowed to disqualifications relating to sales of securities or other broker-dealer activities. The two commentators that addressed this point did not favor narrowing the requirement. The Commission has concluded that any person subject to proceedings or convicted of any of the violations described in section 3(a)(39) of the Act should not be able to rely on the safe harbor from broker-dealer registration. The Commission believes that there is added potential for abusive practices in the sale of an issuer's securities in circumstances where persons who are subject to a statutory disqualification participate without assurance of adequate supervision or regulatory oversight.

Paragraph (a)(2) specifies that the associated person may not be compensated in connection with the sale of the issuer's securities by the payment of commissions or other remuneration based on transactions in securities.[12] In determining whether an associated person is a "broker," the receipt of transaction-based compensation often indicates that such a person is engaged in the business of effecting transactions in securities. Compensation based on transactions in securities can induce high pressure sales tactics and other problems of investor protection which require application of broker-dealer regulation under the Act.

Whether a particular compensation arrangement is "other remuneration" based either directly or indirectly on transactions in securities depends on all of the particular facts and circumstances. For example, in determining whether a particular compensation arrangement involving the

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[6] Letters dated June 27, 1983, from Linda Lewis, Attorney, Office of Chief Counsel, Division of Market Regulation, to Lawrence, Lawrence, Kamin & Saunders; Oct. 10, 1974, from Francis R. Snodgrass, Chief Counsel, Division of Market Regulation to CNA Management Corporation, and LaSalle Fund Inc. [1970-1971 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 77,989 (Dec. 31, 1970).

[7] If an associated person of an issuer is also a registered broker-dealer, the federal securities laws would require such a person to disclose adequately to all purchasers his affiliation with the issuer. *See, e.g.*, Rule 15c1-5.

[8] The term associated person of a broker or dealer means: any partner, officer, director, or branch manager of such broker or dealer (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with such broker or dealer, except any person associated with a broker or dealer whose functions are solely clerical or ministerial. . . .

[9] In the past, the staff has not objected to the sale of an issuer's securities by a person associated with a broker-dealer where the broker-dealer does not participate in the sale but assumes full responsibility for the activities of its associated person and the affiliation is fully disclosed to investors. In such a situation, the associated person of the broker-dealer is supervised by the broker-dealer and is qualified to sell securities under applicable rules of the federal securities laws. Therefore, the safe harbor of Rule 3a4-1 is not necessary or available to such persons. The staff will continue to handle such situations on a case-by-case basis. Under the rules of the self-regulatory organizations, the associated person is required to provide prior written notice to the broker-dealer employer of his intention to effect transactions on behalf of others outside the scope of his employment. The member may also request copies of all documents and statments relating to the transaction. *See* Rules of Fair Practice Art. III, Section 27, NASD Manual (CCH), ¶ 2177 and NASD Notice to Members, 85-21 (March 29, 1985) (proposing amendments to Section 27). The New York Stock Exchange imposes a similar requirement on associated persons of its members. *See* NYSE Rule 346.

[10] *See* section 3(a)(14) of the Act.

[11] In such circumstances, questions also may arise concerning the application of the registration provisions of the Securities Act of 1933 ("1933 Act").

[12] In response to comments received, the language of this paragraph has been modified to make it clear that the associated person may not be compensated, "directly or indirectly," by the payment of commissions or other remuneration based on transactions in securities.

payment of bonuses would not be permissible under the Rule, the following factors may be relevant: (1) When the offering commences and concludes; (2) when the bonus is paid; (3) when it is determined that a bonus will be paid; (4) when associated persons are informed of the issuer's intention to pay bonus; and (5) whether the bonus paid to particular associated persons varies with their success in selling the issuer's securities.

Paragraph (a)(3) specifies that the associated person must not be, at the time of his participation, an associated person of a broker or dealer. Paragraph (c)(2) of the Rule defines an "associated person of a broker or dealer." One commentator suggested that, as an additional preliminary requirement, the Rule should not be available to a person who was an associated person of a broker-dealer or investment adviser within the previous twelve months. This twelve month requirement was proposed as a condition to the second alternative of the safe harbor. The effect of this suggestion to include the twelve month requirement in the preliminary requirement would be to require all persons formerly engaged in the securities business to wait one year before helping an issuer sell its securities under the safe harbor of Rule 3a4–1. The rationale for the one year limitation, as stated in the 1984 Release, is particularly important under the second alternative, which allows full public sales solicitations. The one year limitation would appear to impose an unnecessary burden under the first alternative, where sales are limited to certain financially sophisticated persons and to sales in other limited circumstances, or the third alternative, where "cold call" type solicitation is not permissible.

Finally, one commentator suggested that the Rule should include limitations based on the issuer's volume of sales in relations to its size. It would be difficult to create a volume limitation that would be equitable to all issuers. Furthermore, the other restrictions contained in Rule 3a4–1 are sufficient to ensure that the concerns underlying broker-dealer registration are not applicable. Therefore, no such change has been included in the Rule.

C. The First Alternative Available to Associated Persons

The safe harbor provided by Rule 3a4–1 is available to an associated person of an issuer if, in addition to meeting the preliminary requirements of paragraphs (a)(1)–(3), he meets the conditions to one of three alternatives set forth in paragraphs (a)(4)(i)–(iii).

The first alternative in paragraph (a)(4)(i) is available to an associated person of an issuer if he restricts his participation in any of four ways. Paragraph (a)(4)(i)(A) of the Rule specifies that associated persons of an issuer may offer and sell securities to various financial institutions and intermediaries, such as registered broker-dealers.[13] The Commission believes it is appropriate to include within the safe harbor sales to such institutions and intermediaries given the level of their financial sophistication.

One commentator stated that this provision generally should not be available to so-called "wholesalers," that is, employees of issuers that market securities to registered broker-dealers, but who do not have any contact with potential investors. This commentator suggested that the Rule should not be available in this context unless the broker-dealer takes the securities for investment purposes. If the employees do not receive transaction-based compensation and otherwise meet the requirements of Rule 3a4–1, the Commission does not believe that the Rule should exclude such persons, particularly in light of the fact that in such circumstances the ultimate sales to the public will be made through registered broker-dealers.[14]

In the 1984 Release, the Commission requested comments on whether sales to other persons or entities should be included in the Rule, such as sales to all categories of "accredited investors," as defined in Rule 501(a) under the Securities Act of 1933 (the "1933 Act"). The commentators were divided on whether the first alternative should be extended to include sales to all "accredited investors." Two commentators concluded that an accredited investor is capable of requiring an issuer to make full disclosure about the issue and of protecting himself from any selling pressures exerted by the issuer's employees. Two other commentators argued that the 1933 Act provisions are related to the need for informational disclosure to potential purchasers and not to the need for registration of securities professionals.

The Commission has determined not to include sales to all 1933 Act accredited investors. The fact that the Commission has concluded that, under limited circumstances, investors do not need the protections afforded by registration under the 1933 Act does not dictate a conclusion that a broad exemption from broker-dealer registration is appropriate. Existing Commission rules and those of the self-regulatory organizations that ensure adequate supervision, among other things, seem no less important in this context than in others.

As reproposed, paragraph (a)(4)(i)(B) of the Rule provided a safe harbor for transactions in securities exempt from registration under sections 3(a)(7) and 3(a)(9) of the 1933 Act.[15] The Commission requested comments on whether this alternative should be explanded to include sales of all securities exempt under section 3(a) of the 1933 Act. One commentator suggested that securities exempt under sections 3(a)(3), 3(a)(8), 3(a)(10) and 3 (a)(11) should be included within the safe harbor. The Commission has decided that the addition of securities covered by section 3(a)(10) of the 1933 Act would be appropriate.[16] Transactions in such securities, like transactions in securities covered by sections 3(a)(7) and 3(a)(9), are sufficiently restricted that application of the broker-dealer regulatory scheme is not necessary.

The Commission has not expanded the safe harbor to include all other 1933 Act exempt securities.[17] The purpose of

[13] The Rule also includes sales to registered investment companies (or registered separate accounts), insurance companies, banks, savings and loan associations, and trust companies or similar institutions supervised by a state or federal banking authority and registered investment advisers which are either trustees or are authorized in writing to make investment decisions for trusts.

[14] This part of the Rule is consistent with previous staff interpretations. *See, e.g.*, letter to Ballard & Cardell Corp. (Sept. 14, 1973).

[15] Section 3(a)(7) exempts "certificates issued by a receiver or debtor in possession in a case under title 11 of the United States Code, with the approval of the court." 15 U.S.C. 77c(a)(7). Section 3(a)(9) exempts "except with respect to a security exchanged in a case under title 11 of the United States Code, any security exchanged by the issuer with its existing security holders exclusively where no commission or other remuneration is paid or given directly or indirectly for soliciting such exchange." 15 U.S.C. 77c(a)(9).

[16] Section 3(a)(10) exempts "except with respect to a security exchanged in a case under title 11 of the United States Code, any security which is issued in exchange for one or more bona fide outstanding securities, claims or property interests, or partly in such exchange and partly for cash, where the terms and conditions of such issuance and exchange are approved, after a hearing upon the fairness of such terms and conditions at which all persons to whom it is proposed to issue securities in such exchange shall have the right to appear, by any court, or by any official or agency of the United States, or by any State or Territorial banking or insurance commission or other governmental authority expressly authorized by law to grant such approval." 15 U.S.C. 77c(a)(10).

[17] Persons who effect only transactions in securities exempt under sections 3(a)(3), 3(a)(8) and 3(a)(11) of the 1933 Act are already exempt from the broker-dealer registration provisions of the Act. The

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the securities registration provisions of the 1933 Act (or exemption from registration) is not the same as the purpose of the broker-dealer registration requirement of the Act. Regardless of the amount of disclosure provided to investors, investors need the additional protection offered by the Act including the assurance that the salesman who offers the securities understands and appreciates both the nature of the security and the needs of the buyer.[18]

Paragraph (a)(4)(i)(C) and (a)(4)(i)(D) of the Rule remain unaltered. Paragraph (a)(4)(i)(C) provides a safe harbor for securities transactions in connection with reorganizations reclassifications, and acquisitions which are "made pursuant to a plan submitted for the approval of security holders who will receive securities of the issuer." Paragraph (a)(4)(i)(D) of the Rule includes within the safe harbor sales by associated persons pursuant to a pension, profit-sharing, or other similar employee benefit plans and dividend reinvestment plans.

D. The Second Alternative Available to Associated Persons

The safe harbor provided by Rule 3a4–1 is also available to an associated person of an issuer if that person meets the conditions set forth in paragraph (a)(4)(ii), the second alternative. Those conditions generally require that the associated person primarily perform substantial duties for the issuer otherwise than in connection with transactions in securities; that the associated person was not a broker or dealer or an associated person of a broker or dealer within the preceding twelve months; and that the associated person has not participated in selling an offering to securities on behalf of any issuer within the preceding twelve months other than in reliance of paragraphs (a)(4)(i) or (a)(4)(iii) of Rule 3a4–1. The Rule as adopted contains a limited exception to this one year prohibition for certain sales of securities registered under Rule 415 of the 1933 Act.

Paragraph (a)(4)(ii)(A) of the Rule provides the safe harbor to associated persons who either perform, or are intended to perform, substantial duties for the issuer otherwise that in connection with transactions in securities. Thus, it would not be available to person hired by the issuer specifically for the purpose of selling securities, or to associated persons who sell securities on behalf of the issuer as a primary responsibility or on a frequent basis. Whether the associated person's duties otherwise than in connection with the sale of securities, are "substantial" can be measured in terms of a percentage of time worked and the volume or work performed on matters not related to the sale of securities. The Rule does not provide that a specific period of time should be used in determining whether the associated person performs substantial other duties. That time period will depend on all of the relevant facts and circumstances.

The safe harbor generally would be available to associated persons participating in an initial offering of an issuer where, because of the "start-up" nature of the issuer, the associated persons are not engaged in any activities other than those relating to the offering. The safe harbor would be available to such associated persons if they will primarily perform or are intended to perform substantial other duties for the issuer at the end of the offering.

Paragraph (a)(4)(ii)(B) of the Rule specifies that the associated person may not have been a broker or dealer or an associated person of a broker or dealer within the preceding twelve months.[19] Such persons may have the incentive to solicit former clients and to capitalize on any trust relationship that had been established with those persons in connection with securities transactions. Even assuming full disclosure by these persons of their changed status, (*i.e.*, that they are no longer registered securities professionals), their solicitation or recommendation may unduly influence the former client's investment decision. In addition, the securities sales activities by such persons would lead frequently to the conclusion that such persons were engaged in the business of effecting securities transactions and should be registered as broker under the Act.

One commentator noted that the Rule as reproposed was not clear with respect to whether the term "broker-dealer" applied to registered "issuer-dealers" under state law. Paragraph (c)(2) of the Rule has been amended to clarify that employees or former employees of such "issuer-dealer" or similar entity may use the safe harbor. The staff will provide interpretive advice to those issuers that request such advice.

Paragraph (a)(4)(ii)(C) of the Rule specifies that the associated person may not have sold securities on behalf of any issuer within the previous twelve months other than in reliance on paragraph (a)(4)(i) or (a)(4)(iii) of the Rule. The Commission continues to believe this one year limitation on sales under the second alternative is necessary.

Historically, the frequency with which persons engage in transactions in securities has been a factor in making a determination as to whether those persons are engaged in that business within the meaning of the statutory definition. The Commission continues to believe that broker-dealer registration is appropriate and necessary with respect to persons who are regularly engaged in the sale of securities, such as promoters of limited partnership interests. Accordingly, the condition that the person relying on the safe harbor not have sold securities on behalf of any issuer during the preceding twelve months, coupled with the requirement that the person perform substantial other duties on behalf of the issuer, will preclude the continuous, repeated or multiple sales of securities by persons absent broker-dealer registration.[20]

The Commission has, however, determined that the one year limitation on sales under the second alternative should be modified for certain sales of securities registered under Rule 415 of the 1933 Act. Rule 415 allows issuers to register certain securities and place them "on the shelf" for periods in excess of one year.[21] Rule 3a4–1 as reproposed in 1984 would limit those issuers that wished to take advantage of the safe harbor to a one year shelf offering. Therefore, the Commission has amended paragraph (a)(4(ii)(C) of Rule

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Act, in language similar to section 3(a)(3) of the Securities Act, excludes from the definition of security "any note, draft, bill of exchange, or banker's acceptance which has a maturity at the time of issuance not exceeding nine months, exclusive of days of grace, or any renewal thereof the maturity of which is likewise limited." In addition, 1933 Act section 3(a)(8) securities are not defined as securities under the Act. Finally, section 15(a) of the Act contains an exemption from broker-dealer registration for a broker or dealer whose activities are "exclusively intrastate". Section 3(a)(11) of the 1933 Act also exempts intrastate offerings.

[18] *See, e.g.*, Securities and Exchange Commission, *Report of Special Study of Securities Markets*, Part I, 568, H.R. Doc. No. 94, 88th Cong., 1st Sess. (1963).

[19] In response to concerns raised by several commentators, paragraph (a)(4)(ii)(B) does not include former investment advisers.

[20] There would be substantial broker-dealer concerns raised where an issuer might choose to "rotate" employees every twelve months to sell securities. Under those circumstances, it may be doubtful whether in fact the employees had substantial duties for the issuer other than the sale of securities.

[21] The amount of securities that can be registered for offerings pursuant to Rule 415(a)(1) (viii)—(x) is limited to the amount which, at the time the registration statement becomes effective, is reasonably expected to be offered and sold within two years of the initial effective date. Other 415 offerings are not subject to time provisions.

3a4–1 to allow any issuer that engages in Rule 415 offerings to take advantage of the full offering periods possible under that rule. Thus, for Rule 415 offerings, the twelve month restriction on sales by associated persons would begin at the end of the Rule 415 offering. For example, an associated person of an issuer that sold securities on the first day allowed under the Rule 415 offering could continue to sell those securities until the entire offering was closed even if the offering lasted over twelve months. At the close of the Rule 415 offering, the twelve month restriction would apply and that associated person would not be able to sell securities for any issuer, except in reliance on paragraphs (a)(4)(i) or (a)(4)(iii) of Rule 3a4–1 for the succeeding twelve month period. During that succeeding twelve month period, the associated person would be prohibited from using the safe harbor to sell securities of any issuer, including, for example, other issues sold involving the same general partner.

Commentators on the reproposed Rule made several suggestions to expand Rule 3a4–1 to allow continuous distributions of securities by certain classes or groups of issuers. Two commentators suggested that mutual funds should be allowed to conduct continuous distributions under paragraph (a)(4)(ii). Most mutual funds currently distribute their products either through independent broker-dealers or through their own special purpose broker-dealers. The industry argued that since they are already heavily regulated, the extra regulation under section 15(a) of the Act is unnecessary. The broker-dealer regulatory scheme, however, provides protection to investors not available under the Investment Company Act of 1940 or the Investment Advisers Act of 1940. The Commission believes that broker-dealer registration and regulation is necessary when the associated persons of an issuer engage in active sales promotion of the issuer's securities on a continuous basis.[22]

Commentators also suggested that certain special purpose broker-dealers such as consumer finance companies and investment company affiliates be allowed to conduct their business without registration as broker-dealers. These commentators suggested that the Commission eliminate the twelve month limitation between sales in the second alternative. The Commission believes that where issuers are using employees to sell their securities on a near continuous basis, the policy reasons underlying registration apply. In particular, the protections available under the broker-dealer regulatory scheme are necessary to ensure that investors obtain reliable advice and service from those persons selling securities. Therefore, the Commission has not adopted this suggestion.

One commentator noted that the Rule could be interpreted to permit an issuer's employees to make only one sale to a customer, instead of being able to participate in a complete offering. The language of Rule 3a4–1 now specifies that associated persons may participate in an offering to its completion, at which time the twelve month restriction would begin.

E. The Third Alternative Available to Associated Persons

The third alternative under Rule 3a4–1 is available to associated persons of an issuer who conducts only "passive" sales efforts. Of the six commentators that discussed the third alternative, four approved of the alternative and two urged that such passive sales should not be allowed or should be limited to sales by officers and directors. The two commentators that objected to passive sales stated that sales abuses were possible since persons responding to investor inquiries by telephone could pressure the investor into purchasing securities in a manner similar to the "cold calls" that the third alternative of the Rule does not permit. These commentators also raised concerns regarding difficulties in ensuring compliance with the passive sales condition without inspections by the NASD or the Commission. The four commentators that approved of the alternative did not perceive any such problems and suggested some expansion of the Rule.

The Commission has retained the third alternative with some modifications designed to address the commentators' concerns. With these modifications, the limited sales activity identified in this alternative does not raise significant potential for abuse. Moreover, because of the issuer's potential liability under the securities laws for wrongful conduct of its employees, the issuer has a strong incentive to carefully circumscribe the sales activities of those persons.[23]

Paragraph (a)(4)(iii)(A) allows associated persons of an issuer to prepare and deliver any written communications through the mails or other similar means that do not involve oral solicitation by the associated person of potential purchasers. This activity would include the drafting or editing of sales literature. In order to provide some control over the content of the written communications, however, all such communications must be approved by a partner, officer or director of the issuer. Oral solicitation of a potential purchaser by the associated person would make this alternative unavailable.

Paragraph (a)(4)(iii)(B) of the Rule provides that associated persons can respond to inquiries from potential purchasers in conversations initiated by the purchaser in response to the issuer's original written communication. This provision is intended to permit associated persons to provide information in response to inquiries from potential purchasers about the issuer and the offering. This part of the Rule has been modified to limit permissible responses to information contained in the registration statement filed with the Commission under the 1933 Act or other offering document.[24] This provision does not encompass "cold calls" or telephone solicitations of the public.[25] In response to commentators' requests for clarification, however, the term "conversation" has been changed to "communication." The broader term "communication" is used to clarify that associated persons of an issuer that receive oral or written communications from potential purchasers in response to previously sent written communications may respond either orally or in writing to such investor-initiated communications.

One commentator suggested that meetings between investors and associated persons of the issuer concerning the issuer and its securities should be permitted under the third alternative. Since this alternative is

[22] The staff has, however, issued no-action letters regarding the application of the broker-dealer registration requirement to the sales force of investment companies, including associated persons of a registered investment adviser, where their activities were limited to passive sales. *See supra* n. 6 at 6.

[23] Among other things, the antifraud provisions of the federal securities laws prohibit misrepresentations and omissions of material fact in connection with the sale of securities. *See* section 17 of the 1933 Act and section 10(b) of the Act. In addition, the issuer might be liable for a violation of section 15(a) of the Act if its associated persons' activities are not within the safe harbor and they would otherwise be required to register as broker-dealers.

[24] As discussed below, however, paragraph (a)(4)(iii)(C) of the Rule allows associated persons to perform ministerial or clerical work involved in effecting transactions. This would include responding to questions of a clerical or ministerial nature.

[25] For examle, while the Rule would permit associated persons to respond to inquiries from potential purchasers, the mere fact of an inquiry would not jujatify additional telephone contact with that customer beyond the contact necessary to respond to the customer inquiry.

designed to allow primarily passive sales activities, the Commission believes such meetings should not be specifically included in the Rule. In some instances, these kinds of meetings could be used to pressure investors into purchasing securities. Nevertheless, there may be some circumstances where meetings with investors that are not solicited by the issuer could be permitted without raising broker-dealer registration concerns. The staff will consider such circumstances on a case-by-case basis through the no-action letter process.

Paragraph (a)(4)(iii)(C) of the Rule allows associated persons to perform the ministerial or clerical work involved in effecting transactions. This provision is intended to clarify that associated persons of an issuer will not be deemed to be brokers if they restrict their participation to activities such as bookkeeping entries and arranging for the delivery of stock certificates after a securities transaction has been consummated.

III. Certain Findings, Effective Date and Statutory Basis

Section 23(a)(2) of the Act [26] requires the Commission, in adopting rules under the Act, to consider the anticompetitive effect of such rules, if any, and to balance any impact against the regulatory benefits gained in terms of furthering the purposes of the Act. The Commission has considered proposed Rule 3a4–1 in light of the standards cited in section 23(a)(2) and believes that adoption of the amendments will not impose any burden on competition not necessary or appropriate in furtherance of the Act.

Pursuant to the Administrative Procedure Act, 5 U.S.C. 553(b), interested persons were given an opportunity to submit written views on proposed Rule 3a4–1. After consideration of the relevant matters presented, the proposed Rule concerning persons deemed not to be brokers is adopted substantially as proposed with some technical changes for clarity. In response to commentator's suggestions, the proposed Rule has been amended to clarify that both direct and indirect compensation based on transactions in securities make the exemption unavailable. The Rule also now allows, under certain circumstances, sales of Rule 415 securities without broker-dealer registration. The issues with respect to the scope of the safe harbor have been thoroughly considered during the comment period. Extended delay in adopting the Rule would be costly to investors and issuers.

Rule 3a4–1 grants an exemption from broker-dealer registration. Therefore, pursuant to the Administrative Procedure Act, 5 U.S.C. 553(d), Rule 3a4–1 will become effective immediately upon publication in the **Federal Register.**

IV. Summary of Final Regulatory Flexibility Analysis

The Commission has prepared a Final Regulatory Flexibility Analysis in accordance with 5 U.S.C. § 603 regarding Rule 3a4–1. The Analysis notes that the objective of the Rule is to codify past staff positions on the issuer's exemption and provide guidance for future issuers. The Analysis states that no commentators referred to the Initial Regulatory Flexibility Analysis in discussing the application of Rule 3a4–1 to issuers.

A copy of the Final Regulatory Flexibility Analysis may be obtained by contacting Susan J. Walters, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549, (202) 272–2848.

V. Statutory Basis

The Securities and Exchange Commission, acting pursuant to the Act, particularly Sections 3, 15 and 23 thereof (15 U.S.C. 78c, 78*o*, and 78w) hereby amends Chapter II, Title 17 of the Code of Federal Regulations by adding § 240.3a4–1 thereto.

List of Subjects in 17 CFR Part 240

Securities brokers.

Text of Rule 3a4–1

Chapter II, Title 17 of the Code of Federal Regulations is amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 is revised to read as follows:

Authority: Section 23, 48 Stat. 901, as amended (15 U.S.C. 78w); Section 240.3a4–1 also issued under Secs. 3 and 15, 89 Stat. 97, as amended, 89 Stat. 121 as amended. §§ 240.12b–1 to 240.12b–36 also issued under Secs. 3, 12, 13, 15, 48 Stat. 892, as amended, 894, 895, as amended; 15 U.S.C. 78c, 781, 78m, 78o. §§ 240.14c–1 to 240.14c–101 also issued under Sec. 14, 48 Stat. 895; 15 U.S.C. 78n. §§ 240.15b10–1 to 240.15b10–9 also issued under Secs. 15, 17, 48 Stat. 895, 897, Sec. 203, 49 Stat. 704, Secs. 4, 8, 49 Stat. 1379, Sec. 5, 52 Stat. 1076, Sec. 6, 78 Stat. 570; 15 U.S.C. 78o, 78q, 12 U.S.C. 241 nt.

2. In Part 240, § 240.3a4–1 is added as follows:

§ 240.3a4–1 Associated persons of an issuer deemed not to be brokers.

(a) An associated person of an issuer of securities shall not be deemed to be a broker solely by reason of his participation in the sale of the securities of such issuer if the associated person:

(1) Is not subject to a statutory disqualification, as that term is defined in section 3(a)(39) of the Act, at the time of his participation; and

(2) Is not compensated in connection with his participation by the payment of commissions or other remuneration based either directly or indirectly on transactions in securities; and

(3) Is not at the time of his participation an associated person of a broker or dealer; and

(4) Meets the conditions of any one of paragraphs (a)(4) (i), (ii), or (iii) of this section.

(i) The associated person restricts his participation to transactions involving offers and sales of securities:

(A) To a registered broker or dealer; a registered investment company (or registered separate account); an insurance company; a bank; a savings and loan association; a trust company or similar institution supervised by a state or federal banking authority; or a trust for which a bank, a savings and loan association, a trust company, or a registered investment adviser either is the trustee or is authorized in writing to make investment decisions; or

(B) That are exempted by reason of sections 3(a)(7), 3(a)(9) or 3(a)(10) of the Securities Act of 1933 from the registration provisions of that Act; or

(C) That are made pursuant to a plan or agreement submitted for the vote or consent of the security holders who will receive securities of the issuer in connection with a reclassification of securities of the issuer, a merger or consolidation or a similar plan of acquisition involving an exchange of securities, or a transfer of assets of any other person to the issuer in exchange for securities of the issuer; or

(D) That are made pursuant to a bonus, profit-sharing, pension, retirement, thrift, savings, incentive, stock purchase, stock ownership, stock appreciation, stock option, dividend reinvestment or similar plan for employees of an issuer or a subsidiary of the issuer;

(ii) The associated person meets all of the following conditions:

(A) The associated person primarily performs, or is intended primarily to perform at the end of the offering, substantial duties for or on behalf of the issuer otherwise than in connection with transactions in securities; and

[26] 15 U.S.C. 78w(a)(2).

(B) The associated person was not a broker or dealer, or an associated person of a broker or dealer, within the preceding 12 months; and

(C) The associated person does not participate in selling an offering of securities for any issuer more than once every 12 months other than in reliance on paragraphs (a)(4)(i) or (a)(4)(iii) of this section, except that for securities issued pursuant to Rule 415 under the Securities Act of 1933, the 12 months shall begin with the last sale of any security included within one Rule 415 registration.

(iii) The associated person restricts his participation to any one or more of the following activities:

(A) Preparing any written communication or delivering such communication through the mails or other means that does not involve oral solicitation by the associated person of a potential purchaser; *provided, however,* that the content of such communication is approved by a partner, officer or director of the issuer;

(B) Responding to inquiries of a potential purchaser in a communication initiated by the potential purchaser; *provided, however,* that the content of such responses are limited to information contained in a registration statement filed under the Securities Act of 1933 or other offering document; or

(C) Performing ministerial and clerical work involved in effecting any transaction.

(b) No presumption shall arise that an associated person of an issuer has violated section 15(a) of the Act solely by reason of his participation in the sale of securities of the issuer if he does not meet the conditions specified in paragraph (a) of this section.

(c) *Definitions.* When used in this section:

(1) The term "associated person of an issuer" means any natural person who is a partner, officer, director, or employee of:

(i) The issuer;

(ii) A corporate general partner of a limited partnership that is the issuer;

(iii) A company or partnership that controls, is controlled by, or is under common control with, the issuer; or

(iv) An investment adviser registered under the Investment Advisers Act of 1940 to an investment company registered under the Investment Company Act of 1940 which is the issuer.

(2) The term "associated person of a broker or dealer" means any partner, officer, director, or branch manager of such broker or dealer (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with such broker or dealer, or any employee of such broker or dealer, except that any person associated with a broker or dealer whose functions are solely clerical or ministerial and any person who is required under the laws of any state to register as a broker or dealer in that state solely because such person is an issuer of securities or associated person of an issuer of securities shall not be included in the meaning of such term for purposes of this section.

By the Commission.

John Wheeler,

Secretary.

June 27, 1985.

[FR Doc. 85-16129 Filed 7-8-85; 8:45 am]

BILLING CODE 8010-01-M

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17 CFR PART 288

[Release Nos. 33-6589; 34-22158; 39-996; AFDB-1]

Primary Offerings by the African Development Bank

Correction

In FR Doc. 85-15200, beginning on page 26190 in the issue of Tuesday, June 25, 1985, make the following correction: On page 26192, third column, in the eighth and ninth lines of the Regulatory Flexibility Act Certification, remove ", if promulgated,".

BILLING CODE 1505-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 12 and 178

[T.D. 85-107]

Interim Customs Regulations Amendments Concerning Convention on Cultural Property Implementation Act

Correction

In FR Doc. 85-15142, beginning on page 26193 in the issue of Tuesday, June 25, 1985, make the following correction: On page 26193, first column, in the first line of the **"DATES"** paragraph, "Effective July 25, 1985" should have read "Effective June 25, 1985".

BILLING CODE 1505-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 943

Approval of Permanent Program Amendments From the State of Texas Under the Surface Mining Control and Reclamation Act of 1977

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule.

SUMMARY: OSM is announcing the approval of amendments to the Texas regulatory program (hereinafter referred to as the Texas program) under the provisions of the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

On August 31, 1984, Texas submitted to OSM an amendment to its program which consisted of modifications to the Texas regulations pertaining to effluent limitations and prime farmland (PFL).

After providing opportunity for public comment and conducting a thorough review of the program amendments, the Director of OSM has determined, with one exception, that the amendments meet the requirements of SMCRA and the Federal regulations.

Accordingly, the Director is approving these amendments in accordance with 30 CFR 732.17. The Federal rules at 30 CFR Part 943 which codify decisions concerning the Texas program are being amended to implement this action.

This final rule is being made effective immediately in order to expedite the State program amendment process and encourage States to conform their programs to the Federal standards without undue delay; consistency of the State and Federal standards is required by SMCRA.

EFFECTIVE DATE: July 9, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Robert L. Markey, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, Room 3014, 333 West 4th Street, Tulsa, Oklahoma 74103; Telephone: (918) 581-7927.

SUPPLEMENTARY INFORMATION:

I. Background

Information regarding the general background on the Texas State Program, including the Secretary's Findings, the disposition of comments and a detailed explanation of the condition of approval of the Texas program can be found in the February 27, 1980 **Federal Register** (45 FR 12998). On August 31, 1984, the

Director, Surface Mining and Reclamation Division of the Railroad Commission of Texas (RCT), submitted to OSM pursuant to 30 CFR 732.17, a proposed State program amendment for approval. OSM announced receipt of the amendment and initiated a public comment period on September 25, 1984 (49 FR 37641). The public comment period ended on October 25, 1984. A public hearing scheduled for October 24, 1984, was not held because no one expressed a desire to present testimony.

During its review of Texas' proposed amendment, OSM identified the following concerns:

1. Texas' proposed rules 051.07.04.138(b) and .184(b) would eliminate the definition of "frequently flooded" ("during the growing season, more often than once in two years, and the flooding has reduced crop yields") which corresponds to the U.S. Soil Conservation Service (SCS) criteria in 7 CFR 657.5(a)(2) (iv) and (vi). Since 30 CFR 701.5 defines prime farmland as those lands defined in 7 CFR 657, deviation from these criteria requires concurrence of the SCS State Conservationist (see 7 CFR 657.4(a)(2)). OSM asked Texas to clarify that the RCT's interpretation of the State prime farmland criteria for negative determination purposes will conform with the SCS criteria at 7 CFR 657.5(a)(2).

2. The proposed rule 051.07.04.138(d) and .184(d) did not require the soil survey performed pursuant to the PFL reconnaissance inspection to be of the detail used by the SCS for operational conservation planning, as in 30 CFR 785.17(b)(3).

3. Proposed rule 051.07.04.201(b)(1), did not specify where the SCS National Soils Handbook is available for review.

4. Texas' proposed rule 051.07.04.201(b)(1)(B) vests authority for approval of alternative representative soil profiles with the Railroad Commission of Texas. The Federal rule at 30 CFR 785.17(c)(1)(ii) permits only the SCS State Conservationist to make such a decision.

5. Texas included requirements in rule 051.07.04.201(c)(1) and .624(a) which apply only to the SCS and which Texas cannot enforce.

6. The prime farmland (PFL) exemption for long-term use of certain surface facilities proposed at 051.07.04.620(a)(1) cannot be approved for facilities associated with surface mines. In *In re: Permanent Surface Mining Regulation Litigation II* (Civil Action No. 79–1144, U.S.C. D.C., October 1, 1984), Judge Flannery found that OSM rule 30 CFR 823.11(a) improperly extended the exemption to include facilities associated with surface mining operations.

7. Proposed Texas rule 051.07.04.620(a)(2) which was based on 30 CFR 823.11(b) cannot be approved because Judge Flannery held that the PFL exemption for permanent water impoundments violates section 510(d)(1) of SMCRA.

8. Regulations related to the Texas proposed effluent limitations were unclear in circumstances where the Environmental Protection Agency (EPA) standards contained in 30 CFR 434 are more stringent. OSM requested clarification that EPA standards would prevail and that any discharges of process or other wastewater authorized under proposed Texas rules 051.07.04.340(d)(3) and .510(c)(3) must still comply with applicable State and Federal effluent limitations.

9. The Texas rules used but did not define, the term "support facilities."

10. OSM requested clarification of proposed paragraph 051.07.04.340(a)(8) concerning effluent limits for discharges of water from areas disturbed by surface mining activities.

11. OSM identified some typographical errors and errors of omission.

OSM notified Texas of these concerns in a letter dated January 10, 1985, and Texas responded in a letter dated February 8, 1985, by submitting additional information and explanation and a revised draft of the amended rules, addressing OSM's concerns. On March 7, 1985, OSM announced in the **Federal Register** a reopening and extension of the public comment period to allow the public an opportunity to review and submit comments on the new material (50 FR 9287). This comment period ended March 22, 1985.

II. Director's Findings

A. General Findings

The Director finds, in accordance with SMCRA and 30 CFR 732.17 that the amendments submitted by Texas on August 31, 1984, as amended on February 8, 1985, meet the requirements of SMCRA and the Federal regulations, with the exception of the definition of "support facilities" in Texas rule 051.07.04.008 on which action is being deferred. Only those provisions of particular interest or concern are discussed in the specific findings which follow. Discussion of only those provisions for which specific findings are made does not imply any deficiency in any provision not discussed. The provisions not specifically discussed, including non-substantive modifications, are found to be no less stringent than SMCRA and no less effective than the Federal rules. All of the amended provisions are cited at the end of this notice in the amendatory language for section 943.15.

B. Specific Findings.

1. Texas has amended paragraphs (a)(7) through (d)(3) of rule 051.07.04.340 of the Texas Coal Mining Regulations (TCMR) to establish the maximum limits for effluent in discharges of water from areas disturbed by surface mining activities. The rule requires that discharge of water shall be made in compliance with all applicable Federal and State laws and regulations, and at a minimum, with the standards established in the rule. In response to a concern raised by OSM, Texas responded in a letter clarifying that where the EPA standards at 30 CFR 434 are more stringent than the limits established in the Texas rules, the EPA standards will apply. The Director is satisfied that Texas will apply EPA criteria for all discharges covered in this rule and that the allowance in (d)(3) for discharge of process or wastewater will only be made as long as EPA standards are achieved by the discharges. OSM had also raised a concern that paragraph (a)(8) of proposed rule 051.07.04.340 was unnecessary and that the second sentence could be construed as an exemption from compliance with subsection (c). Texas responded by deleting paragraph (a)(8) from the final rule. Therefore, the Director finds the rule no less effective than 30 CFR 816.42 which applies EPA standards for discharges from areas disturbed by surface mining activities.

2. Texas has amended rule 051.07.04.501 to parallel rule 051.07.04.340, except that rule 051.07.04.510 applies to discharges from areas disturbed by underground mining activities. The underground mining rule does not contain a counterpart to 051.07.04.340(c), but the Director finds that it is not necessary to provide separately for discharges from reclamation areas since "underground mining activities" includes reclamation activities and therefore applicable state and federal laws would apply. Therefore, the Director finds the Texas rule no less effective than 30 CFR 817.42, the Federal counterpart.

3. Texas has amended the following definitions in rule 051.07.04.008, in connection with amendments to rules for prime farmland: "cropland," "historically used for cropland," "prime farmland," "soil horizons," and "topsoil". Texas has also added a definition of "support facilities." The definition of "cropland" is changed to

clarify that cropland does not include land on which quick cover crops are grown primarily for erosion control. The definition of "historically used for cropland" is changed so that lands that would likely have been used for cropland for five of the 10 preceding years but for some unrelated fact of ownership or control, can be considered prime farmland. The definition of "prime farmland" has been changed to closely resemble the Federal definition. The definition of "topsoil" is changed to reflect the addition of the E horizon to the soil horizons.

The proposed definition of "support facilities" was added to rule 051.07.04.008 in the February 8, 1985 modifications in response to OSM's concern that Texas used the term in its proposed rules without having defined the term. The proposed definition is similar to the Federal definition at 30 CFR 701.5. However, the Court in Round I of *In re: Permanent Surface Mining Regulation Litigation II* remanded the Federal definition of support facilities, holding that support facilities should be regulated based upon a functional, rather than a geographic proximity, test. The last line of both the Federal rule and the Texas proposed rule states " 'resulting from or incident to' an activity connotes an element of proximity to that activity." This is contrary to the court's opinion. Therefore, the Director is deferring action on the proposed definition of "support facilities" contained in Texas proposed rule 051.07.04.008. Texas will be notified by letter of the need to further revise the definition of "support facilities" under the provisions of 30 CFR 732.17. With the exception noted above, the Director finds the amended definitions no less than their Federal counterparts in 30 CFR 701.5.

4. Texas has amended rule 051.07.04.138, prime farmland investigation, by deleting the language which defined "frequently flooded" in paragraph (b)(4). OSM expressed concern with this deletion and requested clarification that Texas' interpretation of the State prime farmland criteria for negative determination purposes will conform with the U.S. Department of Agriculture Soil Conservation Service (SCS) criteria at 7 CFR 657.5(a)(2), as modified by the Texas State Conservationist. In its response dated February 8, 1985, Texas stated that "the [Railroad] Commission's interpretation of its prime farmland criteria for negative determination purposes will conform with the SCS criteria at 7 CFR 657.5(a)(2), as modified by the Texas State Conservationist." The other changes to this section do not render the rules less effective than the Federal rules. Therefore, the Director finds this section no less effective than the Federal requirements at 30 CFR 785.17(b).

5. Texas has amended the requirements for prime farmland investigation for underground mines in 051.07.04.184, to correspond with the amendments to 051.07.04.138. Therefore, the Director finds 051.07.04.184 no less effective than the requirements in 30 CFR 785.17(b), for the reasons stated above.

6. Texas has amended rule 051.07.04.201 concerning application contents for prime farmland to more closely resemble the current Federal requirements in 30 CFR 785.17(c) and (d). The Texas rule contains similar requirements to the Federal rule. OSM identified a concern with proposed TCMR 051.07.04.201(b)(1) in that the rule did not contain a sentence identifying where the National Soils Handbook, published by SCS and establishing the acceptable procedures for the conduct of soil surveys, was available for review. In its February 8, 1985 submission in response to OSM's concerns, Texas has added language to paragraph (b)(1) which satisfactorily addresses this concern. Another concern raised by OSM was that paragraph (b)(1)(B) vested authority for approval of alternative representative soil profiles with the RCT rather than the SCS State Conservationist, as the Federal rule requires. Texas has satisfactorily addressed this concern in its final rule which requires approval by the SCS and by the RCT. A third concern was that paragraph (c)(1), which states the role of the SCS in carrying our responsibilities under this rule section, served no purpose and may have proven unenforceable since it required action by the SCS. In response, Texas stated that the paragraph is for informational purposes, and has deleted the language that required SCS action. Therefore, the Director finds that Texas rule 051.07.04.201 is no less effective than 30 CFR 785.17(c) and (d).

7. Texas has amended rule 051.07.04.620 concerning prime farmland applicability and special requirements. The amended provisions cover requirements in 30 CFR 823.11. In a letter to the State, OSM pointed out that the proposed Texas rule contained provisions similar to those in a Federal rule which was remanded by the U.S. District Court for the District of Columbia in Round II of the suit entitled *In re: Permanent Surface Mining Regulation Litigation II* (Civil Action No. 79-1144). The court held that the PFL exemption for long-term use of certain surface facilities found in 30 CFR 823.11(a) was improperly extended to surface mines, and that the PFL exemption for permanent water impoundments in 30 CFR 823.11(b) violates section 510(d)(1) of SMCRA. OSM advised the State that these exemptions could not be approved, in light of the court decision. Texas responded by deleting the language granting these exemptions from its amended rule. Therefore, the Director finds the rule no less effective than the Federal rules.

8. Texas has amended rule 051.07.04.621 to more closely track the Federal requirements for removal of PFL soils. The rule previously provided that such substitution could be approved if an equal or greater productive capacity will result. The rule now provides for removal of other suitable soils materials in lieu of topsoil segregation, only where such materials will create a final soil having a greater productive capacity than the pre-mining soil. Therefore, the Director finds the rule no less effective than 30 CFR 823.12 of the Federal requirements.

9. Texas has amended its requirements for PFL soil stockpiling in rule 051.07.04.622 to contain the same requirements included in the Federal rule for PFL soil stockpiling at 30 CFR 823.12. Therefore, the Director finds the Texas requirements no less effective than the Federal requirements.

10. Texas has amended its requirements for PFL soil replacement in 051.07.04.624 to closely resemble the current Federal requirements in 30 CFR 823.14. The Director finds the Texas rule no less effective than the Federal rule.

11. Texas has amended its requirements for PFL revegetation and restoration of soil productivity in rule 051.07.04.625. The rules closely resemble the current Federal rules in 30 CFR 823.15, revegetation and restoration of soil productivity. The Director finds the Texas rules no less effective than the Federal rules.

12. Texas has proposed to repeal 051.07.04.623, which established an alternative to separate soil horizon removal and stockpiling for prime farmland. The rule provided that the RCT could allow the permittee to remove, store and replace all soil overburden without regard to soil horizons if it was documented that equivalent or higher yields would result. Since there is no Federal counterpart to this rule, its removal does not render the Texas program less effective than the Federal program.

III. Public Comments

Responses to requests for comment were received from the following Federal agencies: the Department of Labor, Mine Safety and Health Administration, the Department of Agriculture, Soil Conservation Service (SCS) and Forest Service, the Department of Interior Fish and Wildlife Service, Bureau of Reclamation and National Park Service, the Advisory Council on Historic Preservation, the Army Corps of Engineers, and the Environmental Protection Agency. Only the SCS and the Advisory Council on Historic Preservation commented on the substance of the proposed rule. The other agencies acknowledged the opportunity to comment but did not offer substantive comments.

The SCS noted that iron limitations from disturbed areas are higher than suggested EPA criteria for fresh water organisms. The Texas effluent limitations rules require at a minimum that EPA standards for discharges from mined areas are met.

The SCS suggested additional language for Texas rules 051.07.04.138(d) and 051.07.04.184(d) to require that soil surveys made by the applicant be made in accordance with certain SCS standards. In its February 8, 1985, modified submission, Texas added language to these rules to require that "soil surveys of the detail used by the U.S. Soil Conservation Service for operational conservation planning shall be used to identify and locate prime farmland soils." This language tracks the language in 30 CFR 785.17(b)(3).

The SCS stated that rules 051.07.04.138 (b)(2) through (b)(4) and 051.07.04.184 (b)(2) through (b)(4) are redundant. Redundancy of paragraphs does not necessarily render the rules less effective than the Federal rules, and in this case, the Director finds the Texas rules no less effective than the Federal rules.

The SCS suggested a language change to Texas rule 051.07.04.201(b)(1)(B)(ii). However, since the Texas rule is virtually identical to the Federal counterpart 30 CFR 785.17(c)(1)(ii), the Director finds the rule no less effective than the Federal rule.

The SCS questioned the basis for the current yield in rule 051.07.04.625(b)(7). Since the rule requires concurrence by the U.S. Soil Conservation Service as to current yields, it is assumed that the basis will be discussed with SCS prior to determination of current yields.

The SCS stated that rule 051.07.04.620(a)(1) does not specify the "minimal amount of land" in quantitative terms. The Federal rule also uses the term "minimal amount of lands," in 30 CFR 823.11(a), and therefore, the Director has determined that the Texas rule is no less effective.

The SCS commented that at amended rule 051.07.04.201(b)(3), for depths of excavation exceeding the soil survey mapping, the need to correlate geologic investigation data should be defined. However, since the Texas rule contains the requirements found in the Federal counterpart, 30 CFR 785.17(c)(3), the Director finds it no less effective and will not require Texas to add this requirement.

The SCS commented that State rules should be established after consultation with SCS. SCS said that the rules were too similar to Federal regulations and that the rules make it appear as though the SCS is being placed in the position of regulatory authority. OSM encourages consultation with the SCS in the formulation of rules, but also requires that the State rules be no less effective than the Federal rules, which include requirements for consultation and/or concurrence by the SCS.

The SCS also offered comments on certain provisions which are being deleted by Texas in this amendment and rule 051.07.04.623, which was proposed for deletion from the Texas regulatory program in this amendment. Since SCS comments were not suggesting retention of the material, they are not discussed herein.

The Advisory Council on Historic Preservation (the Council) submitted comments concerning preservation of historic properties. The Council stated that it understood that OSM is considering approval of the Texas program, as amended, for use in regulating coal mining in Texas. The Council stated that implementation of the State program will likely result in adverse effects upon properties included in or eligible for the National Register of Historic Places.

OSM is not, in this action, considering approval of the Texas program. The Texas program was approved on February 27, 1980 (45 FR 12998). OSM in this action is approving certain amendments to the Texas program. Since the Director finds the Texas amendments no less effective than the counterpart Federal rules, and since the Texas rules contained in the amendment do not relate to program provisions on the consideration of places listed in or eligible for listing in the National Register of Historic Places, the Director has not responded to the Council's comments in this notice.

Comments were also received from the Texas Agricultural Extension Service of the Texas A&M University System. The commenter stated that some of the effluent limitations standards established in the rules were "overly restrictive or ill-conceived," and gave specific examples. The Texas rules require that discharges from areas disturbed by mining activities meet the stricter of either the EPA standards or the Texas standards for effluent limitations. The Director has determined that this is no less effective than the Federal requirements at 30 CFR 816.42 and 817.42 which reference the EPA standards. The Director cannot approve standards which would be less effective than the EPA requirements.

The Texas Agricultural Extension Service also provided a comment concerning the prime farmland rules for revegetation and restoration of soil productivity in rule 051.07.04.625. The commenter said, in reference to paragraphs (b)(7) and (b)(8), that "procedures do not exist today to scientifically adjust yields based on differences in non-mined prime farmland soils and other soils that produce the reference crop, or to make adjustments for disease, pest or weather-induced variations."

The referenced paragraphs of the Texas rules correspond to Federal provisions in 30 CFR 823.15 (b)(7) and (b)(8). The Texas rules are no less effective than the Federal rules. The rules provide discretionary use of the yield adjustment and require concurrence of the U.S. Soil Conservation Service when used. As OSM stated in the preamble to its May 12, 1983 rules for prime farmland: "Adjustments in reference yields for disease and pests could be needed to account for unusual conditions in the measurement period that are beyond an operator's control and that skew comparisons. . . . OSM and SCS agree that these factors potentially can have a large local effect on crop yields." (48 FR 21460, May 12, 1983)

The commenter also objected to the requirement in rule 051.07.04.624(f), that the surface soil layer be replaced in a manner that protects the surface from wind and water erosion before it is seeded or planted. The commenter said that this paragraph could require mulches or other artificial barriers on the surface of the soil prior to seeding or planting regardless of how soon it would be seeded or planted.

The Texas rule does not mention mulch or other stabilizers but says that the soil shall be replaced in a manner that protects the surface from erosion. The Director does not find any conflict with Federal requirements for

replacement of soil, and has approved the rule.

IV. Director's Decision

The Director, based on the above findings, is approving the Texas regulatory amendments as submitted on August 31, 1984, and modified on February 8, 1985, with the exception of the definition of "support facilities" contained in rule 051.07.04.008, under the provisions of 30 CFR 732.17. The Federal rules at 30 CFR Part 943 are being amended to implement this decision.

V. Procedural Matters

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 943

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: June 17, 1985.

Jed D. Christensen,

Acting Director, Office of Surface Mining.

PART 943—TEXAS

30 CFR Part 943 is amended as follows:

1. The authority citation for Part 943 continues to read as follows:

Authority: Pub. L. 95-87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

2. 30 CFR 943.15 is amended by adding a new paragraph (c) as follows:

§ 943.15 Approval of regulatory program amendments.

* * * * *

(c) The following amendments submitted August 31, 1984, as modified February 8, 1985, are approved effective July 9, 1985: revisions amending Texas coal mining regulations at 051.07.04.340, 051.07.04.510, 051.07.04.008 except for the definition of "support facilities," 051.07.04.138, 051.07.04.184, 051.07.04.201, 051.07.04.620, 051.07.04.621, 051.07.04.622, 051.07.04.624 and 051.07.04.625; and repeal of section 051.07.04.623.

[FR Doc. 85-16272 Filed 7-8-85; 8:45 am]

BILLING CODE 4310-05-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1228

Establishment of NARA Regulations Relating to Records Management

Correction

In FR Doc 85-15628 beginning on page 26930 in the issue of Friday, June 28, 1985, make the following correction on page 26935. In the first column, in § 1228.188(a), in the 31st line "type" should read "tape".

BILLING CODE 1505-01-M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101-40

[FPMR Temp. Reg. A-24, Supp. 1]

Use of Travel Agents and Travel Management Centers (TMC's) by Federal Executive Agencies

AGENCY: Office of Federal Supply and Services, GSA.

ACTION: Temporary Regulation.

SUMMARY: This supplement amends FPMR Temp. Reg. A-24 to extend the expiration date and to add certain provisions to reflect GSA's experience gained from Federal agency use of the TMC program. Accordingly, this supplement: (a) Prohibits employees from using a TMC unless their agency authorizes its use; (b) specifies additional kinds of information needed by GSA to properly evaluate an agency request for establishing a TMC; (c) establishes individual GSA project coordinators to act as liaisons between the TMC and the requesting agency; (d) requires certain additional internal procedures for agencies to develop before using the services of a TMC; and (e) revises Attachment A to update telephone numbers for several GSA regional Customer Service Bureaus.

DATES: Effective date: May 25, 1985; expiration date: May 25, 1986, unless otherwise canceled or extended.

ADDRESS: Comments should be addressed to: General Services Administration, Office of Transportation (FT), Washington, DC 20406.

FOR FURTHER INFORMATION CONTACT: Charles T. Angelo, Travel and Transportation Services Division (FTE), FTS 557-1261/(703) 557-1261.

SUPPLEMENTARY INFORMATION: GSA has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more, a major increase in costs to consumers or others, or significant adverse effects. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

(Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c))

In 41 CFR Chapter 101, the following temporary regulation is added to the appendix at the end of Subchapter A to read as follows:

Federal Property Management Regulations Temporary Regulation A-24, Supplement 1

June 17, 1985.

To: Heads of Federal agencies.

Subject: Use of travel agents and travel management centers (TMC's) by Federal executive agencies.

1. *Purpose.* This supplement amends FPMR Temporary Regulation A-24 to extend the expiration date and to revise certain provisions of the regulation listed in paragraph 4 in view of the experience of the General Services Administration (GSA) with Federal agency use of the TMC's.

2. *Effective date.* This regulation is effective May 25, 1985.

3. *Expiration date.* This regulation expires May 25, 1986, unless sooner superseded or canceled.

4. *Explanation of changes.*

a. Paragraph 8 is revised to read as follows:

"8. *Establishment of TMC's.*

a. At the request of Federal agencies, GSA will contract for TMC's in any location where the volume of travel justifies the need for such services and acceptable bidders are available. Generally, GSA will secure services through local travel agents and SATO's; however, areas with dispersed

Federal employees or with a limited number of travel agents may have to be served by more distant firms.

b. Employees are not authorized to use a TMC unless their agency has initially made the decision to use a TMC and has established internal procedures for their use (see par. 12d)."

b. Paragraph 10 is revised to read as follows:

"10. *Agency requests for establishment of TMC's.* The following information is required by GSA to properly evaluate a request to establish a TMC. Requests should be directed to the appropriate GSA regional Customer Service Bureau shown in attachment A having jurisdiction over the State where travel management services are required. For each location to be served, agencies should provide:

a. The name and address of the agency or agencies desiring to use the proposed TMC, including the name and telephone number of an agency representative designated to act as liaison;

b. An estimate of official airline travel (number of tickets and total dollar cost) based on immediate prior year's travel records and an estimate of the percentage of international travel, if any;

c. Number of Federal agency employees;

d. Any special travel requirements that should be included in GSA's solicitation, such as a high percentage of complex international travel."

c. Paragraph 11 is revised to read as follows:

"11. *GSA responsibilities.*

a. GSA, through the appropriate GSA regional Customer Service Bureau, will acknowledge receipt of agency requests immediately and provide an estimated date of evaluation. If further details are needed, subsequent meetings between GSA and agency liaison personnel will be arranged.

b. GSA will handle all required procurement processes, including solicitation development, selection of the successful bidder, and award and administration of the contract.

c. A regional GSA project coordinator will be appointed to act as the primary liaison person between the requesting agency and the TMC contractor."

d. Paragraph 12 is revised to read as follows:

"12. *Agency responsibilities.*

a. Agencies may be requested to participate with GSA on a technical review panel to evaluate proposals from travel agents in the selection process.

b. Agencies will be requested to participate on a local oversight committee to review TMC performance, to coordinate agency and TMC procedures, and to provide GSA with requested information. The local oversight committee participation may be on a rotating or permanent basis.

c. Agencies are required to comply with the terms of the GSA contract and may not make separate contractual arrangements with TMC's.

d. Before a TMC begins service, requesting agencies must establish, as a minimum, certain internal procedures. Since many agencies have numerous field offices participating in the program, it is recommended that they standardize the following:

(1) Establish requirements for certification of official travel. (For example, some agencies require that a copy of the travel authorization be exchanged for each ticket received at the point of delivery; other agencies provide travelers with an accounting code to use when ordering tickets);

(2) Establish billing and payment procedures, including ticket refunds. (For example, an agency with a national or centralized finance office may require field offices to return unused tickets to that office which will, in turn, make a request to the TMC for ticket refunds, rather than field offices returning tickets directly); and

(3) Advise subordinate offices of appropriate TMC billing and payment procedures.

e. Agencies shall provide the TMC with the following information for each location where the service will be performed:

(1) The names and telephone numbers of agency liaison personnel designated to work locally with the TMC contractor and the GSA project coordinator;

(2) Specific ticket delivery locations or "control points," including names and telephone numbers of personnel authorized to accept tickets; and

(3) Notify the TMC of any special or unusual agency travel policies or travel-related requirements.

f. Transactions with a TMC are comparable to those made directly with a carrier. Therefore, transactions between the agency and the TMC are governed by applicable audit regulations. For example, when an agency uses Government Transportation Requests (GTR's) they shall be made out in the name of the TMC, not the carriers. Similarly, unused tickets purchased from the TMC shall be returned directly to the TMC for refunds.

g. Agencies shall remain responsible for employees' compliance with the Federal Travel Regulations, including the mandatory use of the contract airline city-pair program and restrictions on first-class air travel.

h. Agencies shall comply with the "Prompt Payment Act of 1982 and make timely payments to the TMC."

e. Attachment A is revised to update the telephone number of several GSA regions.

5. *Comments and recommendations.* Comments and recommendations concerning the provisions of this regulation may be submitted to the General Services Administration, Office of Transportation (FT), Washington, DC 20406, within 90 calendar days of publication.

Dwight Ink,

Acting Administrator of General Services.

ATTACHMENT A.—AREAS OF JURISDICTION GSA REGIONAL CUSTOMER SERVICE BUREAU

Region	Jurisdiction	Address	Telephone
1	CT, MA, ME, NH, RI, VT	GSA (1FBT), J.W. McCormack, Post Office and Court House, Boston, MA 02109.	FTS 223-2735; COML 617-223-2735.
2	NJ, NY, Puerto Rico, and Virgin Islands.	GSA (2FBT), 26 Federal Plaza, New York, NY 10278.	FTS 264-1259 COML 212-264-1259.
3	DE, MD (Note A), PA, VA (Note B), WV.	GSA (3FBT), 9th & Market Streets, Philadelphia, PA 19107.	FTS 597-5084; COML 215-597-5084.
4	AL, FL, GA, KY, MS, NC, SC, TN.	GSA (4FBT), 75 Spring Street, SW., Atlanta, GA 30303.	FTS 242-5121; COML 404-221-5121.
5	IL, IN, MI, MN, OH, WI	GSA (5FBT), 230 S. Dearborn Street, Chicago, IL 60604.	FTS 353-5375; COML 312-353-5375.
6	IA, KS, MO, NE	GSA (6FBT), 1500 E. Bannister Road, Kansas City, MO 64131.	FTS 926-7519; COML 816-926-7519.
7	AR, LA, NM, OK, TX	GSA (7FBT), 819 Taylor Street, Fort Worth, TX 76102.	FTS 334-2733; COML 817-334-2733.
8	CO, MT, ND, SD, UT, WY.	GSA (8FBT), Denver Federal Center, Building 41, Denver, CO 80225.	FTS 776-7676; COML 303-236-7676.
9	American Somoa, AZ, CA, GU, HI, NV, Northern Mariana Islands, Pacific Trust Territories.	GSA (9FBT), 525 Market Street, San Francisco, CA 94105.	FTS 454-9295; COML 415-974-9295.
10	AK, ID, OR, WA	GSA (10FBT), GSA Center, Auburn, WA 98002.	FTS 396-7455; COML 206-931-7455.
NCR	DC, MD (Note C), VA (Note D).	GSA (WFBT), 7th & D Streets, SW, Washington, DC 20407.	FTS 472-1626; COML 202-472-1626.

Note A.—Except for those counties under NCR jurisdiction as listed in Note C.
Note B.—Except for those cities and counties under NCR jurisdiction as listed in Note D.
Note C.—Counties Prince Georges and Montgomery only.
Note D.—Cities of Alexandria, Fairfax, Manassas, and Manassas Park, and counties of Arlington, Fairfax, Loudoun, and Prince William only.

[FR Doc. 85-16326 Filed 7-8-85; 8:45 am]

BILLING CODE 6820-24-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 0

Editorial Amendments to Part 0

AGENCY: Federal Communication Commission.

ACTION: Final rule.

SUMMARY: This action (Order) makes certain editorial amendments to the Commission Rules. The purpose of these amendments is to change the official title and authority of the Executive Director.

EFFECTIVE DATE: August 9, 1985.

FOR FURTHER INFORMATION CONTACT: Donald L. McClure, Office of General Counsel, (202) 254–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 0

Administrative practice and procedure.

Order

In the matter of editorial amendments to Part 0 of the Commission's Rules.

Adopted: June 27, 1985.
Released: July 5, 1985.

By Office of Managing Director.

1. The purpose of this Order is to make certain editorial amendments to the Commission's Rules which have been rendered necessary by an earlier Commission Order which changed *inter alia*, the official title and authority of the Executive Director, see 46 FR 59975, Dec. 8, 1981, as amended at 47 FR 41380, Sept. 20, 1982; 48 FR 15630, April 12, 1983.

2. The initial amendment is to Part 0 of the Commission's Rules. More specifically, 47 CFR 0.5, 0.11, 0.332(c), (e), 0.401(a)(2), 0.445(g) and 0.455(f) are amended to reflect the title change from the "Office of Executive Director" to the "Office of Managing Director." Moreover, 47 CFR 0.5(b)(1), 0.182, 0.183(a), 0.185, 0.185(a)-(b), 0.186(b)(7) and 0.231(a)-(d), (f)-(h) are amended to also reflect the modification from the "Executive Director" to the "Managing Director."

3. Authority for these amendments is contained in sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C 154(i) and 303(r).

4. In view of the fact that the proposed revisions involve rules of agency organization, prior publication of a Notice of Proposed Rule Making under the provisions of section 4 of the Administrative Procedure Act, 5 U.S.C. 553(b)3)(A), is unnecessary.

5. Accordingly, it is ordered, that effective August 9, 1985 Part 0 of the Commission's Rules is amended as set forth in the attached Appendix. This action is taken pursuant to delegated authority contained in 0.231(d) of the Commission's Rules, 47 CFR 0.231(d).

Edward J. Minkel,
Managing Director.

Appendix

PART 0—[AMENDED]

Chapter I of Title 47 of the Code of Federal Regulations is hereby amended as follows:

1. The authority citation for Part 0 continues to read as follows:

Authority: Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303.

2. Wherever there appears in the sections listed below, the words "Executive Director" are changed to read "Managing Director."

0.5 (a)(1)
0.11
0.182
0.183(a)
0.185 introductory text and 0.185(a)
0.186(b)(7)
0.231 (a)–(d) and (f)–(h)
0.332 (c) and (e)
0.401 (a)(2)
0.445(g)
0.455(f)

3. In addition, § 0.5(b)(1) is revised to read as follows:

§ 0.5 [Amended]

* * * * *

(b) * * *

(1) The Managing Director. The Managing Director is directly responsible to the Commission, works under the supervision of the Chairman, and assists him in carrying out the Commission's organizational and administrative responsibilities. His principal role is to see that other staff units work together and promptly dispose of the matters for which they are responsible.

[FR Doc. 85–16295 Filed 7–8–85; 8:45 am]
BILLING CODE 6712–01–M

47 CFR Part 22

[CC Docket No. 83–1096]

Selection From Among Mutually Exclusive Competing Cellular Applications Using Random Selection or Lotteries Instead of Comparative Hearings; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: This document corrects the specifications for microfiche copies of an application for an initial cellular construction permit for markets beyond the top-120 that appeared at pages 20771 and 20772 in the **Federal Register** of Monday May 20, 1985 (50 FR 20771, 20772).

FOR FURTHER INFORMATION CONTACT: Lawrence R. Krevor, (202) 632–6450.

Erratum

In the Matter of Amendment of the Commission's Rules To Allow the Selection From Among Mutually Exclusive Competing Cellular Applications Using Random Selection or Lotteries Instead of Comparative Hearings (CC Docket No. 83–1096).

Released: June 24, 1985.

In the Memorandum Opinion and Order on Reconsideration, (FCC 85–117) in the above-captioned matter, released May 3, 1985, the specifications for microfiche copies of an initial cellular construction permit for markets beyond the top-120 were incorrectly described. Accordingly, footnote 77 and § 22.913(c) are corrected to read as follows:

[77] The two microfiche copies must be in a format similar to that used for the **Federal Register**: 4 by 6 inches positive or negative copy microform, 24x reduction, readably labeled at the top, enclosed in a paper jacket. The two microfiche copies must be in a clearly labeled envelope accompanying the original appliction.

§ 22.913 Content and Form of Applications.

* * * * *

(c) Copies. Each applicant for an initial construction permit in markets beyond the top-120 shall submit an original and one paper copy of its application. In addition, each applicant shall submit two microfiche copies of its application using a 4 by 6 positive or negative copy microform, 24x reduction, readably labeled at the top and enclosed in a paper jacket. The two microfiche must be in a clearly labeled envelope accompanying the original application. Applicants for other forms of cellular authorization shall submit an original and two paper copies.

* * * * *

Federal Communications Commission.

William J. Tricarico,
Secretary.

[FR Doc. 85–16296 Filed 7–8–85; 8:45 am]
BILLING CODE 6712–01–M

47 CFR Part 73

[Docket No. 20735; RM-1301, et al.; FCC 85-328]

Changes in the Rules Relating To Noncommercial, Educational FM Broadcast Stations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Through this document, the Commission responds to petitions for reconsideration of the *Third Report and Order* in Docket 20735, which dealt with the problem of interference to TV Channel 6 stations caused by noncommercial educational FM (NCE-FM) stations operating on Channels 201-220 (88-92 MHz). The rules adopted in this Memorandum Opinion and Order establish television Channel 6 protection standards for noncommercial educational FM stations, based on a compromise solution proposed by industry representatives of both sides of the long-standing Channel 6 interference problem. This reconsideration action is necessary to reaching a viable solution to the Channel 6 interference dilemma that promises the support of both the television and educational broadcasting industries. It is expected that this action will encourage growth in the educational FM service, with minimum inconvenience to Channel 6 viewers.

EFFECTIVE DATE: These amendments are effective June 20, 1985, except that § 73.506(a)(3) is effective March 1, 1967 for NCE-FM stations authorized before December 31, 1984.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT:

Kathryn Hosford, Mass Media Bureau, (202) 632-9660
Michael Lewis, Mass Media Bureau, (202) 632-9660

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting, Television broadcasting.

Memorandum Opinion and Order; Proceeding Terminated

In the matter of changes in the rules relating to noncommercial, educational FM broadcast stations; Docket No. 20735, RM-1301, RM-1974 and RM-2655.

Adopted: June 20, 1985.
Released: June 27, 1985.

By the Commission: Commissioner Rivera not participating.

Introduction

1. The Commission has under consideration several petitions for reconsideration of the *Third Report and Order (Third Order)* in the above referenced matter and responsive pleadings. (See 49 FR 45146 (November 15, 1984).) The *Third Order* presented a solution to a long-standing problem of interference caused to reception of television Channel 6 (TV-6) by the presence of noncommercial, educational FM broadcast stations (NCE-FM). Both TV-6 and NCE-FM interests filed petitions for reconsideration. Additionally, a compromise solution was jointly submitted which offered a basis for resolving all of the outstanding issues in this proceeding.

2. The Commission's solution in the *Third Order* was presented as a neutral approach to resolving the problem. However, neither side accepted the new rules in total. In virtually every issue, the Commission conclusion received support from one side and criticism from the other side, depending on whether the decision supported or contradicted the commenter's position. This reaffirms the Commission's belief that the solution adopted in the *Third Order* was indeed a balanced approach to this complex question. Nevertheless, in this Memorandum Opinion and Order, we have carefully reconsidered each issue and adjusted the conclusions contained in the *Third Order* based on the additional filings, especially the joint compromise solution.

Background

3. This proceeding was initiated by a petition for rule making filed in 1972 by the Corporation for Public Broadcasting (CPB), requesting a review of the rules governing the assignment of NCE-FM stations. Although several issues have been considered in the overall proceedings, the *Third Order* focused on the resolution of the interference problem between NCE-FM stations and TV-6 stations. This problem occurs primarily because the two services operate immediately adjacent in frequency. When television receivers are tuned to Channel 6 (82-88 MHz), they may also receive signals in the NCE-FM band (88-92 MHz). Although advancements in the design of television receivers may eventually eliminate the interference problem, this proceeding has attempted to provide an interim solution.

4. The Commission's goals in dealing with this vexing problem were to: (1) Allow for expansion of the NCE-FM Service, (2) have minimal negative impact on the TV-6 viewers, and (3) offer a realistic approach for satisfying the needs of all interested parties. The solution adopted by the Commission in the *Third Order* represented a balanced approach attempting to satisfy these goals. The compatibility criteria adopted allowed new NCE-FM stations to cause objectionable interference to no more than 3 square miles of a TV-6 station's Grade B coverage area. This was accomplished by limiting the power of the NCE-FM station based on frequency of operation and field strengths of the TV-6 stations at the NCE-FM transmitter sites. Flexibility was left to the NCE-FM stations to "engineer-in" stations based on use of several interference remedies. NCE-FM stations were given a choice of how much responsibility they desired to accept based on the power levels of the stations (i.e., increased power required increased responsibilities).

5. Both the NCE-FM and TV-6 interests opposed the solution adopted by the Commission and jointly petitioned for a stay of the new rules. Along with the stay, the Commission had to impose a freeze on NCE-FM and TV-6 applications, as no applications could be granted pending resolution of the interference problem. (See 50 FR 5073 (February 6, 1985).) One outcome of the stay was to delay government funding of NCE-FM- stations as provided by the National Telecommunications Information Administration (NTIA) during this fiscal year.

6. In addition to the timely filed petitions, comments, and replies, the Commission, on May 28, 1985, received a joint proposed solution for the interim period. Both NCE-FM and TV-6 interests participated in drafting the submission.[1] On June 3, 1985, the docket was re-opened to allow all parties to comment on the proposed compromise solution. A complete list of commenting parties and abbreviations for those parties is provided in Appendix A.

Joint Compromise Solution

7. Before discussion of the various issues raised in reconsideration, a brief introduction of the compromise solution is in order. We have weighed heavily that proposal and the comments received in reply in arriving at the reconsideration decision. Although a few groups opposed it, the compromise is a solution that representatives of the major interest groups from both sides believe is workable.

[1] The compromise solution was jointly submitted by representatives of: Association of Maximum Service Telecasters, Inc.; National Association of Broadcasters; Taft Broadcasting Company, McGraw-Hill Broadcasting Company, Inc. and Storer Broadcasting Company; Corporation for Public Broadcasting; National Public Radio; and National Federation of Community Broadcasters.

8. The compromise before us can be considered in two parts: (1) Specific provisions for NCE-FM applicants and TV Channel 6 licensees; and (2) various actions to be taken by the NCE-FM parties, TV-6 parties, and the Commission. First, the solution proposes specific rules outlining a complex method of computing acceptable NCE-FM facilities based on limiting interference to no more than 3,000 persons for new stations or decreasing the predicted amount of interference when modifying existing stations. Various allowances are made for filters, receiver antenna directivity, and vertical polarization. Further adjustments can be made for replacement service from TV translators, satellite stations, and reception of same network affiliates. Considerations for existing interference from co-channel and adjacent channel television stations can also be incorporated in computing acceptable facilities. Both parties clearly indicated that they could not support excising or modifying any portions of the proposal.

9. The Commission continues to believe that the *Third Order* represented a reasonable accommodation of the competing interests of the NCE-FM and TV-6 communities. However, the success of any such solution depends, in large part, on the perception of the parties that it is a fair balancing of their competing interests. It is apparent that the respective camps did not believe that the *Third Order* fairly accommodated their interests. Thus, it is reasonable to assume that our efforts to preserve TV-6 service and provide new NCE-FM service would be marred by extended litigation of parties at odds with each other and the perceived inadequacies of the Commission's solution. In such circumstances, the overall ends of the Commission and the interests of the public would be better served by adoption of the compromise solution. Although that solution does not represent the views of all parties, it is one that major participants believe is fair. As such, it has a greater likelihood of succeeding to the overall benefit of the public by protecting TV-6 service and providing new NCE-FM service without interminable litigation.

Issues

10. There are several issues to be considered in this matter. We have attempted to present these issues in a manner similar to that found in the various filings. The issues to be considered are as follows:

1. Television Receiver Standards
2. Effective Interference Model
3. Engineers in Charge Licensing Discretion
4. Undesired Signal to Desired Signal (U/D) Ratios
5. Population Considerations
6. NCE-FM Basic Power Levels
7. Allowances for Interference Remedies
8. Adjustments for Alternatives and Existing Interference
9. Collocation
10. NCE-FM Grandfathering Rights

Each issue will be developed separately with special reference to the compromise solution.

Issue 1: Television Receiver Standards

11. Several commenters again suggested that the Commission should adopt receiver standards because improvements in television interference immunity criteria would virtually eliminate the interference problem. The basis of this contention, that better rejection of the FM band would ameliorate the problem, is because the interference is caused by deficient television receivers and not by spurious or improper emission broadcast by NCE-FM stations.

12. In lieu of adopting new standards immediately, CPB, NTIA, and MAET urged that receivers be improved through the adoption of incentives by decreasing the protection criteria or by specifying a schedule for implementing voluntary standards. The parties to the compromise solution urged "the Commission to adopt, by October 1, 1987, mandatory television receiver standards to decrease or eliminate the interference which NCE-FM operations can cause to Channel 6 reception." They noted that the need for interim rules should diminish as the potential for interference decreases.

13. The Commssion concurs with the need for receiver improvements. However, even if the Commission were to adopt receiver standards to cope with the problem, that would be a very long-term solution. A recently released report from the Electronic Industries Association/Consumer Electronics Group (EIA) indicates that 50 percent of all color televisions bought 15 years ago are still in service. (*EIA Color Television Replacement Study*, April 1985, by Market Facts, Inc.) The report further states that 4 out of 5 sets are still in service after 10 years. Therefore, even if the sets being produced today had significantly better rejection of the FM band than those produced yesterday, the impact could not be realized for at least a decade or longer. This provides little immediate relief to either the NCE-FM or TV-6 interests.

14. Given the long-term nature of this solution, we feel it is better to allow the television receiver manufacturers additional time to set and implement voluntary criteria. The EIA has established a committee to develop such standards and is in the process of drafting a specific measurement procedure. The Commission will continue to monitor the committee's progress. As pointed out in the *Third Order*, at paragraph 9, the Commission will exercise its statutory authority to set such immunity criteria if the industry fails to do so in a reasonable time. Even the lesser option of establishing incentives, schedules, or "due dates" appears premature unless the receiver industry fails to act positively on its own. From the evidence before us, the industry appears to have every intention of developing improved immunity standards on its own; thus, we decline to establish timetables at this time. Therefore, upon reconsideration, the Commission reaffirms its decision in the *Third Order* by not adopting mandatory television receiver performance criteria at this time.

Issue 2: Effective Interference Model

15. The effective interference model, as devised by the Commission's Office of Science and Technology, was used in developing the acceptable power levels adopted in the *Third Order*. Its use was opposed by TV-6 interests. The FM interests generally supported it. NPR and NFCB supported the model as an improved method of accounting for the probabilities of service and interference, while the TV Petitioners and others such as Channel 6 felt that the effective interference model predicts less interference than actually will occur. In addition to the accuracy argument, CPB in agreement with the TV Petitioners noted that effective interference was of little practical use because the computer program (TVINT) failed to predict where the interference will occur.

16. No new arguments were presented here. Neither the effective interference model nor the conventional method of interference prediction can accurately determine exactly where the interference will occur. Even the parties in the compromise solution acknowledge, "the interference prediction method [conventional] used in this proposal is based on probabilities and therefore all persons within the predicted interference area will not actually receive interference."

17. We continue to believe that the effective interference model provides a good tool for examining the net effect of interference on TV-6 service. Even if its predictions differ from the conventional method (and in many cases the predictions between the two methods

are almost equal), effective interference provides a realistic method upon which to build a protection plan. However, we need not belabor that point here because we agree that the effective interference model in its current form (*i.e.*, the TVINT program) is unable to provide an NCE–FM applicant or the TV–6 licensee with an acceptable means to define the boundaries of an interference area. Athough the effective interference model can display those locations where interference is likely through a graphics enhancement, we will accept the industry's current reluctance to use this approach. The compromise solution is based on the ability of both sides to define where interference is likely to occur. Currently, that can most easily be done by conventional methods.

18. Upon reconsideration, we reject the petitioners' contentions that the effective interference model is fundamentally flawed, but we find its use inappropriate in implementation of the joint compromise.

Issue 3: Engineers in Charge Licensing Discretion

19. Most commenters rejected the idea of the Commission's Engineers in Charge (EIC) involvement in the station licensing procedure. Basically, the Engineer in Charge would have ascertained that the many interference complaints normally received at the outset of NCE–FM operation were resolved before final licensing. Both sides opposed this procedure primarily because no specific guidelines were given to assure a uniform policy nationwide. Although we believe such a policy could be developed and successfully implemented through the Engineers in Charge, the majority of commenters appeared to favor other, more specific, alternatives to resolve this interference question.

20. For the compromise solution to work it will be necessary for the TV–6 licensee to be aware of the number of persons in its audience who are receiving interference from an NCE–FM licensee. To assist with this the Commission will funnel all interference complaints it receives about NCE–FM operation to the TV–6 licensee. Then the TV–6 licensee can pursue resolution of these complaints with the NCE–FM licensee and assure that the required number of filters have been installed. Since the TV–6 licensee will perform the complaint monitoring role originally envisioned for the FCC Engineer in Charge, we will, upon reconsideration, remove the Engineer in Charge from the complaint resolving and licensing procedure.

Issue 4: Undesired Signal to Desired Signal (U/D) Ratios

21. On this issue, both interests were on opposite sides. The NCE–FM commenters supported the Commission's use of a fixed U/D ratio reference; whereas, TV–6 commenters felt that the U/D ratio should vary with the TV–6 signal strength.[2] NPR and NPCB contended that the Commission was correct in using the U/D ratio for −65 dBm received signal strength universally throughout the whole Grade B service area. They claimed that as the TV–6 field strength increases, viewers use lesser quality antennas, causing little improvement in the signal present at the antenna terminals of the television receivers. WJAC–TV, the TV Petitioners, and others believed that the U/D ratio should vary because using the lower U/D ratio uniformly would degrade higher quality pictures more noticeably than lower quality pictures. In addition, the Channel 6 Commenters stated that the Commission erred in its judgement that Channel 6 reception would be most susceptible to interference from educational FM stations closest in frequency to the Channel 6 facility; and thus, the U/D ratios presented in the *Second Further Notice of Proposed Rule Making* (*Second Further Notice*) and used in the *Third Order* were incorrect. EIA noted that it submitted pictorial evidence of the nonlinear nature of the interference which supports the TV Petitioners demonstration that considerable interference would occur.[3]

22. In brief, the NCE–FM interests relied on the concept that the television service contours were defined such that the same "standard criterion of service," (that is, "acceptable quality to a median observer")[4] is available at the Grade A contour as is available at the Grade B contour of the TV station with the probability of receiving that quality decreasing as one moves further from the TV transmitter. Assumptions of receiving antenna installations typical of suburban and near-fringe areas are incorporated in order to achieve the same quality of service at both contours.

23. On the other hand, the TV Petitioners argued that signal levels at television receivers do vary from −65 dBm near the Grade B contour to −15 dBm near the television transmitter and it is inappropriate to equalize the strength of the received television signal based on differing received antenna systems. Thus, it contended that "the only rational basis upon which to base an allocations system which considers signal strength is to equate received signal strength with predicted field strength, which will diminish as one moves away from a television transmitting antenna and increase as one moves closer to it." Several showings, including a tape demonstration, were submitted indicating the effects of using the uniform U/D ratio on picture qualities of differing signal strengths.

24. This difficult subject of relating signal strengths at the television receiver terminals based on the field strength of the transmitted station is further complicated by defining probabilities of service considering "acceptable" quality and varying TASO grades. Additionally, the arguments made by both sides are essentially correct. As the NCE–FM interests contend, the definition of Grade A and Grade B service contour denotes that 70% of the locations at the Grade A contour and 50% of the locations at the Grade B contour receive the *same* quality of service; thus, the same quality of service is received at both locations but more viewers at the Grade A are likely to receive an acceptable picture quality. On the other hand, the TV–6 interests are correct in stating that higher field strengths occur close to the transmitter site and so better service quality is received at some locations of higher field strengths.

25. In this debate over picture quality, there were no new arguments. The Commission in the *Third Order* chose to offer NCE–FM applicants a reasonable expectation of providing service within the television station's service area by allowing more than "just perceptible" degradation of better picture qualities. Our expectation was that television viewers would not experience interference at levels that would cause less than "passable" (or TASO 3)

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[2] In the *Second Further Notice of Proposed Rule Making* (47 FR 24144 (June 3, 1982)), the Commission proposed to use the ratios of desired to undesired (U/D) signal strengths which would cause "just perceptible" interference to the TV reception. The desired TV signal strength was held at a constant −65 dBm level to simulate acceptable reception typically found at the Grade B contour.

[3] EIA noted that it was not referenced in the *Third Order* or the list of commenters attached in Appendix B. The Commission acknowledges this oversight and wishes to assure both EIA and Channel 6 Commenters that their views were reviewed and fully considered within the arguments of other parties. We found the arguments presented by Channel 6 Commenters about the data irregularities to be unfounded because its arguments were not supported with actual evidence. Further, the acceptance of the suggested ratios by the other parties minimized its objections.

[4] See *Third Notice of Further Proposed Rule Making*, Docket Nos. 8736, 8975, 8976, 9175; FCC, March 21, 1951; and *Sixth Report and Order*, Docket Nos. 8736, 8975, 8976, 9175; FCC, April 11, 1952.

picture qualities and we noted that no data was presented that convinced us that serious picture degradation would occur.

26. Therefore, it was with considerable concern that the Commission evaluated the showings and viewed the video tape supplied by the TV Petitioners which allegedly showed significant degradation of high quality television pictures applying the U/D ratio selected by the Commission. Upon study, however, we believe theTV Petitioners used an incorrect U/D ratios to produce the tape. In the *Third Order*, we adopted power limits based on a 21 dB U/D reference (26 dB minus 5 dB for required remedies). It appears that the tape presented to the Commission used U/D ratios of 25 dB or 26 dB. Our concerns remained, however, due to the other showing, submitted by Jules Cohen, based on theoretical analysis of perceptible difference between TASO grades which supported the TV Petitioners' contention of resulting in picture qualities of "not usable" (TASO 6).

27. To gain additional insight into the interference results, the Commission's staff from the Mass Media Bureau conducted some non-conclusive but informative tests similar to those conducted by the industry in making the tape demonstration. Four television receivers were examined with desired signal levels of: −65 dBm, −45 dBm, −25dBm, and −15 dBm. These levels generally correspond respectively to picture grades of TASO 3, TASO 2, TASO 1, and TASO 1. [5] For completeness of the record, the results of those tests using a constant 21 dB U/D reference, adjusted for frequency, are included in Appendix B as TASO grade degradations versus undesired signal presence. Except for one receiver, degradation was usually not below TASO 3 (passable) picture quality. This was far less severe than the tape presented by the TV Petitioners.

28. The compromise solution must be considered in light of our investigations and the reply comments. Based on our limited sample, it appears that the use of a fixed U/D reference would not result in excessive interference to many television receivers. However, the use of varying ratios as proposed in the compromise solution would lessen the likelihood that excessive interference would occur. Thus, we find that the use of better than minimum standards offers the viewing public added security that actual interference should always be less than predicted. Thus, upon reconsideration, we will adopt the method employing variable ratios. The Commission recognizes that this decision may be altered based on the data forthcoming from the immunity tests planned by EIA and based on the field survey of actual FM interference to Channel 6 reception that the parties of the joint agreement have pledged funds to a combined total of $250,000. Indeed, MAET in reply to the joint proposal claimed that its field experience indicates that the actual interference experienced is much less than that predicted. The joint agreement requested the Commission to update the performance data on the rejection capabilities of newer television receivers within the next 12 months. In this regard, the Commission will have some data on newer receivers within this time period. Additional information is also anticipated from other sources, such as, the EIA testing and the field survey.

Issue 5: Population Considerations

29. MST, the TV Petitioners, NPR, and NFCB, among others, argued that allowances should be made for population density. The TV Petitioners indicated a willingness to accept a loss of 1,000 to 3,000 viewers (depending on the method used to compute the loss) as a result of a new NCE–FM station. Both sides argued that failure to take population into account results in incorrect power levels. The TV–6 interests favored decreased NCE–FM power levels as a result of higher population density and the NCE–FM interests desired higher power levels in low population density areas. Channel 6 Commenters pointed out that the Commission's use of average households in TV–6 service areas is unrealistic and should be revised.

30. Upon reconsideration, we concur that population density should be taken into account. We originally tried to simplify the power calculation by using average population density. Use of population unfortunately must complicate the process of power determination, especially when attempting to define where the affected population resides and whether any mitigating factors should be taken into account (*e.g.*, same network service). Such issues lead to controversies and require tremendous amounts of time from applicants, TV–6 interests, and Commission staff. The compromise solution offers a procedure that, while complex, is rigidly controlled by specific standards which should avoid most arguments over the population affected. We believe it takes the concerns of both sides into account and provides a reasonable solution.

31. The choice of 3,000 population affected for each new station and a decrease of 2 affected viewers for each 1 newly affected viewer for existing stations making changes was agreed upon as a reasonable compromise. Restrictions based on interference limited to 3,000 people is a factor that has consistently been suggested in comments to this proceeding. For the Commission to make further studies of the effects of these values would delay this proceeding further and possibly undermine the delicate balance that the compromise represents. Therefore, we will accept these standards. Again, we will expect further investigations (the actual interference study) to confirm the continued use of this number.

Issue 6: NCE–FM Basic Power Levels

32. The *Third Order* provided for two basic power levels: Level 1 and Level 2. Level 1 power was meant to allow for a limited amount of interference without placing heavy responsibility on the NCE–FM stations for eliminating interference. Level 2 was a higher power, but NCE–FM Stations were to correct all interference complaints.

33. Again, both sides disagreed on the effects of the levels adopted. TV–6 interests denoted the effects of these new power levels on their service areas. For example, the TV Petitioners presented several maps showing interference at the newly permitted power levels. An analysis of Station WRTV Channel 6 in Indianapolis, Indiana, licensed to McGraw-Hill, indicated that the current authorization of 400 watts would be allowed to increase to 50,000 watts; and thereby, it claimed severe interference would occur. KAUZ, KCEN, WJAC–TV, and several others noted that as many as 40 separate applications were pending that would cause additional interference within their Grade B service area. WPSD, WATE, Chronicle, and others demonstrated through affidavits, letters, news articles, and even pictures that the interference the public has had to contend with over the years is severe.

34. On the other hand, NPR, CPB, NFCB, St. Olaf College, and other NCE–FM interests commented that the power levels are too low. GPTC wrote that such restrictive power levels would make statewide NCE–FM networks difficult. MAET noted that its stations have been operating successfully above those permitted by the *Third Order* and

[5] See Appendix B for the definition of TASO Grades 1 to 6. These grades of picture quality were developed in *Engineering Aspects of Television Allocations*, Report of the Television Allocation Study Organization (TASO) to the Federal Communications Commission, March 16, 1959.

all complaints have been resolved satisfactorily. Family Stations suggested that the NCE–FM levels were unfair because if the restrictions on the NCE–FM stations were extended to the commercial band, the Capital Cities station in Providence, R.I. (Channel 222) would be reduced from 100 kilowatts to 2.9 kilowatts. Further, most NCE–FM commenters did not favor having the upper Level 2 power limited. Rather, they preferred to add remedies to the Level 1 power with no power maximums (other than for the class of station).

35. Upon reconsideration, we note that the compromise solution provides a good balance between these views. Although various applications, such as that noted by Mt. Vernon, may not be acceptable without amendment, we must establish a procedure that is considered a workable solution. The power levels of the facilities are individually computed to cause interference to no more than 3,000 persons (or to decrease the number of viewers affected in the case of existing stations' modifications). Specific standards are used to predict interference areas. This should make it easier for all parties to agree to the predicted effects of new NCE–FM stations, and end the ambiguity over the effects of different power levels and associated remedies.

36. We take this opportunity to reaffirm that power levels less than 100 watts ERP will not be permitted. Nothing in the reconsideration or the comments suggested that this previous decision should be reversed. We wish to clarify that acceptable powers are computed for a minimum center of radiation at 100 feet above average terrain. Adjustments for higher centers of radiation, using the F50/50 charts so that calculated distances to the 1 mV/m contours remain constant, to achieve conformance with other rules (such as these interference standards) that require a reduction in power to less than 100 watts, will not permitted.

37. The Commission acknowledges that FM stations on Channel 220 must consider its effect on Channel 6 televison stations while those seeking to operate on Channel 221 do not. We find the argument by Family Stations, and others about extending the power restrictions to the commercial band to be outside the scope of this proceeding. There is nothing in the record convincing us to extend such restrictions to the commercial band or to arbitrarily alter the prediction criteria.

Issue 7: Allowances for Interference Remedies

38. Almost all commenters favored the Commission taking a stronger position on the remedial value of various options. In the *Third Order*, we declined to assign benefit values for the individual remedies, deferring to the judgments of the individual licensees in their own unique situations. Especially, in the areas of vertical polarization and transmitter placement with regard to TV receiving antenna orientation, there appears to be general agreement among the commenters. Indeed the compromise solution offered values that were agreeable to both sides.

39. *Vertical Polarization.* NTIA, NCE–FM interests, and TV–6 interests generally want or will accept an allowance for vertical polarization of the FM transmitting antenna. The value that appears acceptable to both sides is 10 dB, or 16 dB if the predicted interference is in rural areas. The Commission finds no problem with these values, recognizing that the more densely populated an area, the more the correct value will tend toward 10 dB. The compromise solution also presents a formula for mixed polarity that is based on these figures. No opposing comments were received. Therefore, upon reconsideration, we have no reservation about adopting specific values for vertical polarizations as presented in the compromise solution.

40. We note that, in the case of existing NCE–FM stations, the compromise solution suggests that the value of the vertical adjustment be decreased by 3 dB (or half the power) if an affected TV–6 licensee purchased an applicant's antenna. The provision would require existing NCE–FM stations, which voluntarily wish to operate with vertical polarization with powers above that authorized for new stations, to give affected TV–6 licensees the option of purchasing the applicant's antenna with the incentive of limiting the NCE–FM station to half the vertical power adjustment. If the TV–6 licensee declines, then the NCE–FM applicant purchases its own antenna and receives the full power adjustment. The Commission recognizes that for TV–6 stations experiencing interference, it is desirable for NCE–FM stations to employ vertical polarization. Additionally, for a NCE–FM using vertical polarization, operating at half the normally authorized vertical component of the NCE–FM station's power should further improve the interference situation. Thus, although unusual, this proposal provides an incentive for an existing educational station to replace an otherwise usable horizontally polarized antenna; and consequently, decrease the amount of interference that TV–6 viewers may be experiencing. Therefore, the rules will be amended to encourage both parties to explore this compromise as a means of alleviating existing interference. Family Station requested that the option to offer the purchase be given first to the NCE–FM station. However, the NCE–FM station has other options available for making changes besides the use of vertical polarizations and need not pursue this vertical polarization option. Consequently, we maintain that the NCE–FM applicant does have the first option in deciding whether to operate vertically polarized; and, therefore, the rule will be adopted as proposed.

41. *TV Receive Antenna Directivity.* To account for the directivity of home receiving antennas, the TV Petitioners proposed an allowance of 6 to 16 dB for predicted interference locations depending upon the antenna's distance and azimuth from both the NCE–FM and the TV–6 transmitters. The NCE–FM interests desired at least a 10 dB allowance for the front-to-back ratio of outdoor television antennas outside the Grade B contour. Here, the parties agreed on an adjustment of 6 dB throughout the whole service area with applicability dependent upon the interference location being inside or outside the Grade A contour.

42. This appears to be a reasonable compromise acceptable to both parties. It recognizes the differing signal relationship of the television receiver location with respect to both the NCE–FM and TV–6 transmitters, and, therefore, is adopted.

43. *Filters.* MAET suggested that filters should be able to provide up to 20 dB or more of protection. They based this finding on tests of a new "Pico Filter." Even the TV Petitioners suggested that filters may be a useful solution if the population resorting to their use is kept to a minimum. On page 22 of their petition for reconsideration, they stated, ". . . filters are an arguably practical solution to at least part of the problem."

44. The compromise solution presents a unique proposal regarding this question. Rather than assigning a specific value of effectiveness (a dB level), it suggested a limit to the number of people to be considered part of an effective filter program. It provided that interference to up to 1000 people could be remedied through the use of filter installation.

45. We support this proposal. The Commission encourages filter

installation as a means of alleviating interference. The fact that the NCE–FM stations have to bear the cost of poor television receiver performance is unfortunate, but we recognize the usefulness of filters as an effective remedy. In the case of modifications of existing stations, the proposal requires that 2 filters be installed for every new person that loses predicted service due to the change in facilities. Because filters can improve picture quality, this proposal would be a benefit to the television public and, therefore, is adopted.

46. The Commission recognizes that there may well be some difficulties in equating filter installations (or television sets) to population. There could arise a situation where the NCE–FM applicant is required to install more filters than there are television sets, or to "cure" more interference than exists. We clarify that the requirement is that a certain *number* of filters be effectively installed; and as such, one home may have more than one filter installation and any means may be used to achieve the installation (such as detailed instructions). In addition, the rule requires that the filters be installed only in the predicted interference area. In this regard, we will rely on the arguments made by the NCE–FM applicant and the TV–6 licensee that the obligation has been met. However, all parties should be flexible in this matter because it is most unlikely that any method can predict the exact interference area with precision. Thus, the Commission will use discretionary judgment when evaluating whether this obligation has been met. In addition to the NCE–FM applicant providing "goodwill" services, the TV–6 station is encouraged to accept responsibility for receiver deficiencies especially outside the predicted interference area and pursue a joint cooperative venture in this area of filter installations. As for whether a filter is effective, noninjurious to the television signal, and installed "as a condition of its license," the Commission believes that in general, these are inappropriate terms for rules. Our interpretation is that these factors are implicit in the rule requiring the installation of filters. However, we have retained the requirement that the NCE–FM applicant provide sufficient information for the TV–6 licensee to verify the installation.

47. *Other Remedies.* Although other remedies (such as terrain shielding) may be possible, the record does not support adoption of further "standard" allowances. The compromise solution suggests that a special showing be allowed for exceptional terrain conditions. In this matter, we concur that exceptional circumstances may be taken into account but we expect this to be limited to situations such as an intervening mountain range rather than rugged terrain in general. (See § 73.313(e) for a similar exception when computing antenna heights above average terrain.)

Issue 8: Allowances for Alternatives and Existing Interference

48. Additional allowances for alternatives, such as cable penetration, market share, or translators were suggested. Some commenters proposed that existing interference to TV–6 stations from co-channel and adjacent channel television stations should also be considered when computing the NCE–FM station's power limit. Fortunately, parties on both sides agreed upon how some of these elements can be taken into account. The proposed rules provided specific standards concerning how to account for alternate television service from TV translator, satellite stations, and some network affiliates (ABC, NBC, and CBS), as well as, consideration of existing interference from other co-channel and adjacent channel television stations. We therefore will permit adjustments to the NCE–FM station's power for these situations based on those suggested in the compromise solution.

Issue 9: Collocation

49. Both interests supported collocation (within 400 meters) as a good solution to the interference problem. The TV Petitioners requested that NCE–FM applicants be required to coordinate with the TV Channel 6 station to assure matched attenna patterns. Similarly, the NCE–FM interests asked that TV–6 licensees be required to permit access to their transmitter site. In addition, the compromise solution presents power values that vary from those adopted in the *Third Order*. It also specifies that coordination be required through the use of similar antenna design (either physical structure or vertical pattern matching).

50. Upon reconsideration, we concur that antenna pattern is important to assure uniform U/D ratios throughout the television station's service area. We therefore require that the FM station's predicted antenna pattern be matched to the TV station's predicted antenna pattern as suggested in the compromise solution. While the Commission declines to require the TV–6 licensees to provide space for the NCE–FM transmitters, we do encourage close cooperation and will consider the degree of cooperation (or lack thereof) in deciding disputed cases. In addition, we see no difficulty in adopting the agreed upon power limits of the compromise. (See Table B in Appendix C.)

Issue 10: NCE–FM Grandfathering Rights

51. TV–6 interests generally opposed grandfathering of all existing NCE–FM stations. KOIN–TV suggested that there is no basis for grandfathering and that the Commission failed to comply with the Administrative Procedures Act by not providing sound reasoning for grandfathering. They indicate that grandfathering is not supported by the record, and yet the TV Petitioners, in their comments to the *Second Further Notice* supported grandfathering of existing and operational NCE–FM stations, except in cases subject to litigation. The TV Petitioners would require existing NCE–FM stations desiring to make changes to comply with the new rules. Channel 6 Commenters, and KAUZ–TV opposed grandfathering, noting that existing interference could be reduced because many NCE–FM stations would be authorized much less power under the new rules. KOIN–TV, in reply, concurred with grandfathering of existing stations "except where a change in channel would cure the interference" and opposed grandfathering of any outstanding construction permits or pending applications.

52. The NCE–FM interests desired more relaxed grandfathering provisions. NPR and CPB would allow changes to existing stations, at the grandfathered power levels, if the stations would agree to resolve all new complaints as a result of the changes. St. Olaf College submitted that 53.2 percent of the NPR stations would forfeit their grandfathered powers if they made changes and the St. Olaf station would have to go off the air. The University of Southern California requested that grandfathered stations be allowed to "trade" interference areas. MAET supported easing the grandfathering restrictions.

53. Upon reconsideration, we believe that the compromise solution offers an acceptable resolution by grandfathering stations authorized prior to December 31, 1984, and providing options for existing stations to make changes while limiting their ability to create new expansive areas of interference. For example, stations may change facilities or locations without being subject to the new station rules if the population predicted to gain TV Channel 6 service is twice the population predicted to lose

TV Channel 6 service. Existing licensed stations are grandfathered at their current facilities, however, and can continue to operate as authorized. We cannot justify requiring existing stations to come under the new rules if no changes are made. In fact, we believe such an action would be contrary to the Communications Act of 1934, as amended. Those stations for which a construction permit has been issued, as of December 31, 1984, need not conform to the new station rules and will be considered as existing stations for the purpose of further modifications. However, those applications for license with oppositions, or those still in litigation, where the TV–6 station can definitely show that *actual* interference is excessive, will be decided on a case-by-case basis, possibly invoking some of the solutions adopted by this proceeding.

Implementation

54. Pending applications for construction permits for new stations or modifications of existing stations have until October 1, 1985, to amend their application to comply with the new rules adopted herein or provide a showing that the existing application is in compliance. After this date, all applications that are not in compliance or have not responded may be returned. Those applicants applying for funding from the National Telecommunications and Information Administration (NTIA) must submit to the Commission by June 30, 1985, a letter certifying that their application will be acceptable under these rules either "as is" or "by amending power, height, or site to . . ." as required. Applications will not be returned to the beginning of the processing line due to the filing of these amendments.

Other Matters

55. As the final step in the review process of the NCE–FM rules, the *Third Order* also made some general changes to the processing rules. GPTC noted that the new definition for objectionable interference between FM stations significantly increases the interference area. It stated that waivers based on allowing 5% or less of the proposed service area to receive interference would be vastly more difficult to obtain. One example showed that the area to receive objectionable interference would rise from 640 sq. mi. under the old definition to 1700 sq. mi. under the new. GPTC requested that since the change was made to eliminate an anomaly for second and third adjacent channel requirements, the old definition should be sustained for co-channel and first-adjacent separations.

56. Before discussing the waiver process, the Commission would like to clarify this rule section. Section 73–509 requires that an NCE–FM application not cause "objectionable interference" top existing NCE–FM stations. The procedure for determining objectionable interference is the subject of this amendment. The old rule indicates that certain undesired to desired signal ratios at the 1 mV/m contour cannot be exceeded, while the new rule simply states that an undesired signal level cannot overlap the 1 mV/m (or 60 dBu) desired signal contour. Under normal circumstances, both statements result in the same requirements. It is when waivers are requested that the new definition results in a larger area of consideration. However, it is when the application severely violates the requirement and approaches the existing NCE–FM transmitter site that the first definition of U/D ratios is inappropriate. This occurs because these ratios are not valid at the higher field strengths close to the transmitter, but were developed for interference protection at the 1 mV/m contour. For these reasons, upon reconsideration, the rule as set forth in the *Third Order* is affirmed. To permit waivers along the lines of those contemplated in the Commission's decision (see Public Notice; FCC 81–332, 49 R.R. 2d 1524(1981)), however, the permitted level of received interference will be doubled; resulting in a requirement of 10% or less of the proposed service area.

57. Finally, the establishment of minimum power and antenna heights requires an adjustment of class definition for NCE–FM stations to permit a continuous range of facilities. Thus, § 73.506(a)(3) and 73.511 have been amended to account for this oversight.

Conclusion

58. The solution presented here incorporates many of the elements in the *Second Further Notice*, the *Third Order*, and the comments filed throughout this proceeding. We feel that the joint compromise solution is but a refinement of the procedure to be used based on the record. This solution provides flexibility for growth of the NCE–FM service, minimizes interference, incorporates many of the suggestions from both sides, and encourages cooperation between TV–6 and NCE–FM licensees, permittees, and applicants.[6] With the adoption of rules based on this compromise, we hope to end a long history of inflexibility on both sides. This action removes the freeze on acceptance and processing of applications and the stay on the new rules, as modified. We sincerely hope that all interested parties will give this solution a chance. The proceeding has lasted too long and this reconsideration provides an opportunity for action. We will continue to monitor the situation informally and offer further fine tuning, as necessary.

Regulatory Flexibility Final Analysis

I. Reason for Action

To revise the decision in the *Third Report and Order*. The Commission, in that document, sought to minimize the chance of interference to Television Channel 6 stations caused by new noncommercial educational FM stations operating in the service area. Several commenters filed petitions for reconsideration of that decision and representatives of both the educational FM and the TV Channel 6 parties submitted a joint compromise solution.

II. Objective

To continue the development of noncommercial educational FM service with minimal loss of television Channel 6 service.

III. Legal Basis

Sections 303(r) and 4(i) of the Communications Act of 1934, as amended.

IV. Description, Potential Impact and Number of Small Entities Affected

The rules adopted will provide assignment standards for new noncommercial educational FM stations and clarify the position of existing noncommercial educational FM stations operating within or near the TV Channel 6 service area. The rules are expected to encourage growth in educational broadcasting services, while minimizing interference to present television Channel 6 service. This action results from an agreement approved by representatives of major parties on both sides of this long-standing problem.

Existing NCE–FM stations will not be subject to the adopted rules, unless they request a modification of their facilities.

[6] KAUZ–TV and KOIN–TV urged that the rules to reduce interference to Channel 6 be applied to FM translators also. However, the FM translator rules (§ 74.1203) require that such stations cannot cause interference " . . . to the direct reception by the public of the off-the-air signal of any authorized broadcast station . . . nor shall an FM translator cause interference to reception by a television broadcast translator station of its input signals." This requirement, therefore, should provide sufficient protection to all television stations operating on Channel 6.

New noncommercial educational FM stations will have clear guidelines for predicting the impact their operation will have on Channel 6 viewers. These rules replace ambiguous requirements with clearly defined procedures.

V. Recording, Record-Keeping and Other Compliance Requirements

Applicants for new or modified NCE-FM stations would have to provide sufficient information to verify that their obligation to effectively install an agreed upon number of filters on television receivers has been met.

VI. Federal Rules Which Overlap, Duplicate or Conflict With This Rule

None.

VII. Any Significant Alternative Minimizing the Impact on Small Entities and Consistent With the Stated Objective

This compromise represents the most practical solution to the Channel 6 interference problem because it has the acceptance and presumed cooperation of both Channel 6 and educational FM interests. The new rules encourage both the TV Channel 6 and educational FM interests to work together, with limited Commission participation to solve any prospective interference problems.

Paperwork Reduction Act Statement

59. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose new or modified requirements or burdens upon the public. Implementation of any new or modified requirement or burden will be subject to approval by the Office of Management and Budget as prescribed by the Act.

Actions

60. The Secretary shall cause a copy of this Memorandum Opinion and Order, including the Final Regulatory Flexibility Analysis, to be sent to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Paragraph 603(a) of the Regulatory Flexibility Act (Pub. L. No. 96-354, 94 Stat. 1164, 50 U.S.C. *et seq.*).

61. Accordingly, it is ordered, that the subject Joint Motion is granted and, pursuant to the authority contained in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, that Part 73 of the Commission's Rules is amended as set forth in the attached Appendix C, effective up adoption pursuant to section 5 U.S.C. s/s 553(d)(i).

62. It is further ordered, that the petitions for reconsideration listed in Appendix A are granted to the extent indicated and in all other respects are denied.

63. It is further ordered, that the freeze on TV Channel 6 applications and noncommercial educational FM station applications as described in paragraph 5 of this document is lifted.

64. It is further ordered, that the Stay ordered as described in paragraph 5 of this document is dissolved.

65. It is further ordered, that this proceeding is terminated.

66. For further information contact Kathryn Hosford or Michael Lewis at 632-9660.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Note.—Appendices A and B will not be published in the Code of Federal Regulations.

Appendix A—Summary of Commenting Parties

Joint petition for Stay

Association of Maximum Service Telecasters, Inc. (MST)
Corporation for Public Broadcasting (CPB)
McGraw-Hill Broadcasting Company (McGraw-Hill)
National Association of Broadcasters (NAB)
National Federation of Community Broadcasters (NFCB)
National Public Radio (NPR)
Taft Broadcasting Company (Taft)

Petitions for Reconsideration

Adams TV of Wichita Falls, Inc., KAUZ-TV, Wichita Falls, Texas (KAUZ-TV)
Channel 6, Inc., KCEN-TV, Temple-Waco, Texas (KCEN-TV)
Chronicle Broadcasting of Omaha, Inc. WOWT-TV, Omaha, Nebraska (Chronicle)
Georgia Public Telecommunications, Inc. (GPTC)
Informal Comments filed separately by: Deborah S. Proctor, president of Educational Information Corporation/WCPE; Nationwide Communications Inc.; and David Brown, pastor of the First Assembly of God, Bluefield, Va.
KOIN-TV, Inc., Portland, Oregon (KOIN-TV)
KOTV, Inc., Tulsa, Oklahoma (KOTV)
KTAL-TV, Inc., Texarkana, Texas (KTAL-TV)
Mississippi Authority for Educational Television (MAET)
MST
National Telecommunications and Information Administration (NTIA)
Petition filed jointly by: CPB, NFCB, and NPR. (FM Petitioners)
Petition filed jointly by: Arkansas Educational Television Commission, Central California Educational Television, Cosmos Broadcasting Corporation and Station KRMA-TV. (Channel 6 Commenters)
Petition filed jointly by: Capital Cities Communications, Inc., Chronicle, McGraw-Hill, MST, NAB, Storer Communications, Inc., Taft, and The Outlet Company. (TV Petitioners)
University of Southern California (USC)
WPSD-TV, Paducah, Kentucky (WPSD-TV)

Oppositions

Consumer Electronics Group of the Electronic Industries Association (EIA)
CPB
NPR/NFCB
St. Olaf College, Northfield, Minnesota (St. Olaf College)
TV Petitioners
WJAC, Inc., Johnston, Pennsylvania (WJAC-TV)

Reply Comments

Alaska Public Broadcasting Commission
CPB
Family Stations, Inc., Oakland, California (Family Stations)
MAET
NPR/NFCB
NTIA
TV Petitioners

Compromise Solution

Filed jointly by representatives on behalf of: CPB; McGraw-Hill, Taft, and
Storer; MST; NAB; NFCB; and NPR.

Replies

EIA
Family Stations
KCEN-TV
KOIN-TV
Letter on behalf of parties to Joint Compromise Solution
MAET
Mount Vernon Nazarene College (Mt. Vernon)
NTIA

Appendix B—Informal Study of Interference Effects of the Technical Standards Adopted in the Third Report and Order (Docket No. 20735)

The undesired to desired signal levels were:

Channel	Frequency	U/D desired (dBm) =	Undesired (dBm)			
			−65	−45	−25	−15
201	88.1	1.0	−64.0	−44.0	−24.0	−14.0
203	88.5	6.5	−58.5	−38.5	−18.5	−8.5
205	88.9	12.0	−53.0	−33.0	−13.0	−3.0
207	89.1	21.0	−44.0	−24.0	−4.0	0.0
211	90.1	21.0	−44.0	−24.0	−4.0	0.0

Channel	Frequency	U/D desired (dBm) =	Undesired (dBm)			
			−65	−45	−25	−15
215	90.9	27.0	−38.0	−18.0	0.0	0.0
220	91.9	39.0	−26.0	−6.0	0.0	0.0

(a) Aural TV carriers were 9 dB below peak visual levels.

(b) Video programming was obtained from off-the-air signal, translated to Channel 6.

(c) FM interference was generated by an RF signal generator, modulated to ±75 kHz.

(d) Desired and undesired signals were simply mixed so as to provide the desired levels and ratios at receiver inputs.

The level of picture quality were defined as:

1. EXCELLENT. The picture is of extremely high quality as good as you could desire.

2. FINE. The picture is of high quality providing enjoyable viewing. Interference is perceptible.

3. PASSABLE. The picture is of acceptable quality. Interference is not objectionable.

4. MARGINAL. The picture is poor in quality and you wish you could improve it. Interference is somewhat objectionable.

5. INFERIOR. The picture is very poor but you could watch it. Definitely objectionable interference is present.

6. UNUSABLE. The picture is so bad that you could not watch it.

For the four TV receivers, the results are as follows:

Notes:

2/3 Picture quality is observed as 2 (fine) before FM interference is introduced and 3 (passable) after;

(2) Denotes the amount of attenuation (in dB) needed to restore picture to a 3 (passable) picture:

*Denotes that picture would be 3 (passable) except color was lost.

Channel	Frequency	U/D desired (dBm) =	Picture quality with interference			Off/on −15
			−65	−45	−25	
Receiver No. 100, Date: February 1, 1985						
201	88.1	1.0	3/3	1/1	1/1	1/1
203	88.5	6.5	3/3	2/3	1/2	1/2
205	88.9	12.0	3/3	2/2	1/2	1/2
207	89.1	21.0	3/3	2/3	1/2	1/2
211	90.1	21.0	3/3	2/3	1/3	1/2
215	90.9	27.0	3/3	2/3	1/3	1/2
220	91.9	39.0	3/3	2/4 (2)	1/1	1/1
Receiver No. 102, Date: February 1, 1985						
201	88.1	1.0	3/3	2/3	1/3	1/3
203	88.5	6.5	3/3	2/2	1/2	1/2
205	88.9	12.0	3/3	2/2	1/1	1/2
207	89.1	21.0	3/3	2/2	1/2	1/1
211	90.1	21.0	3/3	2/3	1/3	1/2
215	90.9	27.0	3/3	2/3	1/3	1/2
220	91.9	39.0	3/3	2/5 (1)	1/1	1/1
Receiver No. 29, Date: February 1, 1985						
201	88.1	1.0	3/5* (3)	2/5* (2)	1/5* (3)	1/5* (3)
203	88.5	6.5	3/5* (6)	2/5* (7)	1/5* (6)	1/5* (6)
205	88.9	12.0	3/5* (4)	2/5* (3)	1/5* (2)	1/5* (4)
207	89.1	21.0	3/5* (5)	2/5* (5)	1/5* (5)	1/5 (5)
211	90.1	21.0	3/3	2/4 (4)	1/4 (4)	1/4 (4)
215	90.9	27.0	3/3	2/4 (4)	1/4 (5)	1/3
220	91.9	39.0	3/3	2/3	1/1	1/1
Receiver No. 31, Date: February 1, 1985						
201	88.1	1.0	3/3	2/2	1/2	1/2
203	88.5	6.5	3/3	2/2	1/1	1/1
205	88.9	12.0	3/3	2/2	1/1	1/2
207	89.1	21.0	3/3	2/3	1/2	1/2
211	90.1	21.0	3/3	2/2	1/2	1/2
215	90.9	27.0	3/3	2/2	1/2	1/1
220	91.9	39.0	3/3	2/3	1/1	1/1
Receiver No. 31, (Same receiver without 5 dB allowance), Date: February 1, 1985						
201	88.1	6.0	3/3	2/3	1/2	1/2
203	88.5	12.5	3/3	2/2	1/2	1/2
205	88.9	18.0	3/3	2/2	1/2	1/2
207	89.1	26.0	3/3	2/3	1/2	1/2
211	90.1	26.0	3/3	2/2	1/3	1/2
215	90.9	33.0	3/3	2/3	1/2	1/1
220	91.9	44.0	3/3	2/4 (3)	1/1	1/1

Appendix C

PART 73—[AMENDED]

Title 47 CFR Part 73 is amended as follows:

1. The authority citation for Part 73 continues to read as follows:

Authority: Secs. 4 and 303, 48 Stat. as amended, 1066, 1082; (48 Stat. 154, 303).

2. 47 CFR 73.506 paragraph (a)(3) is revised to read as follows:

§ 73.506 Classes of noncommericial educational FM stations and channels.

(a) * * *

(3) Noncommercial educational FM stations (NCE–FM) with more than 0.01 kW transmitter power output are classified Class A, B1, B, C2, C1, or C depending on the effective radiated power, antenna height above terrain, and the zone in which the station's transmitter is located, on the same basis as provided for stations on the the non-reserved FM channels in §§ 73.205 and 73.206, and the location of its 1 mV/m contour based on the maximum facilities listed in § 73.211.

Note.—For NCE–FM stations authorized before December 31, 1984, the provisions of this subparagraph [§ 73.506(a)(3)] become effective March 1, 1987.

* * * * *

3. 47 CFR 73.509 is revised in its entirety to read as follows:

§ 73.509 Prohibited overlap.

(a) An application for a new or modified NCE–FM station other than a Class D (secondary) station will not be accepted if the proposed operation would involve overlap of signal strength contours with any other station whose transmitter is located more the 320 kilometers (199 miles) from the U.S.-Mexican border and operating in the reserved band (Channels 200–220, inclusive) as set forth below:

Frequency separation	Contour of proposed station	Contour of other station
Co-channel	0.1mV/m (40 dBu)	1 mV/m (60 dBu).
	1 mV/m (60 dBu)	0.1 mV/m (40 dBu).
200 kHz	0.5 mV/m (54 dBu)	1 mV/m (60 dBu).
	1 mV/m (60 dBu)	0.5 mV/m (54 dBu).
400 kHz	10 mV/m (80 dBu)	1 mV/m (60 dBu).
	1 mV/m (60 dBu)	10 mV/m (80 dBu).
600 kHz	100 mV/m (100 dBu)	1 mV/m (60 dBu).
	1 mV/m (60 dBu)	100 mV/m (100 dBu).

(b) An application by a Class D (secondary) station, other than an application to change class, will not be accepted if the proposed operation would involve overlap of signal strength contours with any other station as set forth below:

Frequency separation	Contour of proposed station	Contour of any other station
Co-channel	0.1 mV/m (40 dBu)	1 mV/m (60 dBu).
200 kHz	0.5 mV/m (54 dBu)	1 mV/m (60 dBu).
400 kHz	10 mV/m (80 dBu)	1 mV/m (60 dBu).
600 kHz	100 mV/m (100 dBu)	1 mV/m (60 dBu).

(c) The following standards must be used to compute the distances to the pertinent contours:

(1) The distance of the 60 dBu (1 mV/m) contours are to be computed using Figure 1 of § 73.333 [F(50,50) curves] of this Part.

(2) The distance to the other contours are to be computed using Figure 1a of § 73.333 [F(50,10) curves]. In the event that the distance to the contour is below 16 kilometers (approximately 10 miles), and therefore not covered by Figure 1a, curves in Figure 1 must be used.

(3) The effective radiated power (ERP) that is the maximum ERP for any elevation plane on any bearing will be used.

(d) An application for a change (other than a change in channel) in the facilities of a NCE–FM broadcast station will be accepted even though overlap of signal strength contours, as specified in paragraphs (a) and (b) of this section, would occur with another station in an area where such overlap does not already exists, if:

(1) The total area of overlap with that station would not be increased;

(2) The area of overlap with any other station would not increase;

(3) The area of overlap does not move significantly closer to the station receiving the overlap; and,

(4) No area of overlap would be created with any station with which the overlap does not now exist.

(e) The provisions of this section concerning prohibited overlap will not apply where the area of such overlap lies entirely over water.

4. 47 CFR 73.511 is revised in its entirety to read as follows:

§ 73.511 Power and antenna height requirements.

(a) No new noncommercial educational station will be authorized with effective radiated power less than 0.1 kW.

(b) No new noncommercial educational station will be authorized with effective radiated power greater than 50 kW in Zones I and I–A or 100 kW in Zone II.

(c) Stations licensed before December 31, 1984, and operating above 50 kW in Zones I and I–A, and above 100 kW and in Zone II may continue to operate as authorized.

5. A new 47 CFR 73.525 entitled "TV Channel 6 protection" is added to read as follows:

§ 73.525 TV Channel 6 protection.

The provisions of this section apply to all applications for construction permits for new or modified facilities for a NCE–FM station on Channels 200–220 unless the application is accompanied by a written agreement between the NCE–FM applicant and each affected TV Channel 6 broadcast station concurring with the proposed NCE–FM facilities.

(a) *Affected TV Channel 6 Station.*

(1) An affected TV Channel 6 station is a TV broadcast station which is authorized to operate on Channel 6 that is located within the following distances of a NCE–FM station operating on Channels 201–220:

TABLE A

NCE–FM channel	Distance (kilometers)	NCE–FM channel	Distance (kilometers)
201	265	211	196
202	257	212	195
203	246	213	193
204	235	214	187
205	225	215	160
206	211	216	177
207	196	217	174
208	196	218	166
209	196	219	159
210	196	220	154

(2) Where a NCE–FM application has been accepted for filing or granted, the subsequent acceptance of an application filed by a relevant TV Channel 6 station will not require revision of the pending NCE–FM application or the FM station's authorized facilities, unless the provisions of paragraph (e)(3) of this section for TV translator or satellite stations apply.

(b) *Existing NCE–FM Stations.* (1) An NCE–FM station operating on Channels 201–220 with facilities authorized as of December 31, 1984, is not subject to this section if it proposes:

(i) To make changes in operating facilities or location which will maintain or decrease predicted interference as calculated under paragraph (e) of this section to TV Channel 6 reception in all directions; or,

(ii) To decrease its ratio of vertically polarized to horizontally polarized transmissions.

(2) Applicants must comply with the provision of paragraphs (c) or (d) of this section unless the application for modification demonstrates that, for each person predicted to receive new interference as a result of the change, existing predicted interference to two person will be eliminated. Persons predicted to receive new interference are those located outside the area predicted to receive interference from the station's currently authorized facilities ("existing predicted interference area") but within the area predicted to receive interference from the proposed facilities ("proposed predicted interference area"). Persons for whom predicted interference will be eliminated are those located within the existing predicted interference area and outside the proposed predicted interference area.

(i) In making this calculation, the provisions contained at paragraph (e) will be used except as modified by paragraph (b)(3) of this section.

(ii) The following adjustment to the population calculation may be made: up to 1,000 persons may be subtracted from the population predicted to receive new interference if, for each person substracted, the applicant effectively installs two filters within 90 days after commencing program tests with the proposed facilities and, no later than 45 days thereafter, provides the affected TV Channel 6 station (as defined in paragraph (a) of this section) with a certification containing sufficient information to permit verification of such installation. The required number of filters will be installed on television receivers located within the predicted interference area; provided that half of the installations are within the area predicted to receive new interference.

(3) Where an NCE–FM applicant wishes to operate with facilities in excess of that permitted under the provisions of paragraphs (c) or (d) of this section, by proposing to use vertically polarized transmissions only, or to increase its ratio of vertically to horizontally polarized transmissions, the affected TV Channel 6 station must be given an option to pay for the required antenna and, if it takes that option, the NCE–FM vertically polarized component of power will be one half (−3 dB) that which would be allowed by the provisions of paragraph (e)(4) of this section.

(4) Applications for modification will include a certification that the applicant has given early written notice of the proposed modification to all affected TV Channel 6 stations (as defined in paragraph (a) of this section).

(5) Where the NCE–FM station demonstrates in its application that it must make an involuntary modification (*e.g.*, due to loss of its transmitter site) that would not otherwise be permitted under this section, its application will be considered on a case-by-case basis. In such cases, the provisions of paragaph (b)(3) of this section do not apply.

(c) *New NCE–FM Stations.* Except as provided for by paragraph (d) of this

section, applicants for NCE–FM stations proposing to operate on Channels 201–220 must submit a showing indicating that the predicted interference area resulting from the proposed facility contains no more than 3,000 persons.

(1) In making these calculations, the provisions in paragraph (e) of this section will be used.

(2) The following adjustment to population may be made: up to 1,000 persons may be subtracted from the population within the predicted interference area if, for each person substracted, the applicant effectively installs one filer within 90 days after commencing program tests and, no later than 45 days thereafter, provides the affected TV Channel 6 station with a certification containing sufficient information to permit verification of such installation. The required number of filters will be installed on television receivers located within the predicted interference area.

(d) *Collocated Stations.* As an alternative to the provisions contained in paragraphs (b) and (c) of this section, an application for a NCE–FM station operating on Channels 201–220 and located at 0.4 kilometer (approximately 0.25 mile) or less from a TV Channel 6 station will be accepted under the following requirements:

(1) The effective radiated power cannot exceed the following values:

TABLE B

NCE–FM channel	Power (kilowatt)	NCE–FM channel	Power (kilowatt)
201	1.1	211	26.3
202	1.9	212	31.8
203	2.9	213	38.0
204	5.0	214	46.7
205	8.3	215	56.2
206	10.0	216	67.6
207	12.0	217	83.2
208	14.8	218	100.0
209	17.8	219	100.0
210	21.4	220	100.0

(2) The NCE–FM application will include a certification that the applicant has coordinated its antenna with the affected TV station by employing either: the same number of antenna bays with radiation centers separated by no more than 30 meters (approximately 100 feet) verticially; or, the FM vertical pattern not exceeding the TV vertical pattern by more than 2dB.

(e) *Calculation of Predicted Interference Area and Population.* Predictions of interference required under this section and calculations to determine the number of persons within a predicted interference area for NCE–FM operation on Channels 201–220 are made as follows:

(1) The predicted interference area will be calculated as follows:

(i) The distances to the TV Channel 6 field strength contours will be predicted according to the procedures specified in § 73.684, "Prediction of coverage," using the F(50,50) curves in Figure 9, § 73.699.

(ii) For each TV Channel 6 field strength contour, there will be an associated F(50,10) FM interference contour, the value of which (in units of dBu) is defined as the sum of the TV Channel 6 field strength (in dBu) and the appropriate undesired-to-desired (U/D) signal ratio (in dB) obtained from Figures 1 and 2, § 73.599, corresponding to the channel of the NCE–FM applicant and the appropriate F(50,50) field strength contour of the TV Channel 6 station.

(iii) An adjustment of 6 dB for television receiving antenna directivity will be added to each NCE–FM interference contour at all points outside the Grade A field strength contour (§ 73.683) of the TV Channel 6 station and within an arc defined by the range of angles, of which the FM transmitter site is the vertex, from 110° relative to the azimuth from the FM transmitter site to the TV Channel 6 transmitter site, counterclockwise to 250° relative to that azimuth. At all points at and within the Grade A field strength contour of the TV Channel 6 station, the 6 dB adjustment is applicable over the range of angles from 70° clockwise to 110° and from 250° clockwise to 290°.

(iv) The distances to the applicable NCE–FM interference contours will be predicted according to the procedures specified in § 73.313, "Prediction of Coverage," using the proposed antenna height and horizontally polarized, or the horizontal equivalent of the vertically polarized, effective radiated power in the pertinent direction and the F(50,10) field strength curves (Figure 1a, § 73.333).

(v) The predicted interference area will be defined as the area within the TV Channel 6 station's 47 dBu field strength contour that is bounded by the locus of intersections of a series of TV Channel 6 field strength contours and the applicable NCE–FM interference contours.

(vi) In cases where the terrain in one or more directions departs widely from the surrounding terrain average (for example, an intervening mountain), a supplemental showing may be made. Such supplemental showings must describe the procedure used and should include sample calculations. The application must also include maps indicating the predicted interference area for both the regular method and the supplemental method.

(2) The number of persons contained within the predicted interference area will be based on data contained in the most recently published U.S. Census of Population and will be determined by plotting the predicted interference area on a County Subdivision Map of the state published for the Census, and totalling the number of persons in each County Subdivision (such as, Minor Civil Division (MCD), Census County Division (CCD), or equivalent areas) contained within the predicted interference area. Where only a portion of County Subdivision is contained within the interference area:

(i) The population of all incorporated places or Census designated places contained within the predicted interference area will be subtracted from the County Subdivision population;

(ii) Uniform distribution of the remaining population over the remaining area of the County Subdivision will be assumed in determining the number of persons within the predicted interference area in proportion to the share of the remaining area of the County Subdivision that lies within the predicted interference area; and,

(iii) The population of the incorporated places or Census designated places contained within the predicted interference area will then be added to the total, again assuming uniform distribution of the population within the area of each place and adding a share of the population proportional to the share of the area if only a portion of such a place is within the predicted interference area.

(iv) At the option of either the NCE–FM applicant or an affected TV Channel 6 station which provides the appropriate analysis, more detailed population data may be used.

(3) Adjustments to the population calculated pursuant to paragraph (e)(2) of this section may be made as follows:

(i) If any part of the predicted interference area is within the Grade A field strength contour (§ 73.683) of a TV translator station carrying the affected TV Channel 6 station, the number of persons within that overlap area will be subtracted, provided the NCE–FM construction permit and license will contain the following conditions:

(A) When the TV translator station ceases to carry the affected TV Channel 6 station's service and the cessation is not the choice of the affected TV Channel 6 station, the NCE–FM station will modify its facilities, within a reasonable transition period, to meet the requirements of this section which

would have applied if no adjustment to population for translator service had been made in its application.

(B) The transition period may not exceed 1 year from the date the NCE–FM station is notified by the TV Channel 6 station that the translator station will cease to carry the affected TV Channel 6 station's service or 6 months after the translator station ceases to carry the affected TV Channel 6 station's service, whichever is earlier.

(ii) If any part of the interference area is within the Grade B field strength contour (§ 73.683) of a satellite station of the affected TV Channel 6 station, the number of persons within the overlap area will be subtracted, provided the NCE–FM permit and license will contain the following conditions:

(A) If the satellite station ceases to carry the affected TV Channel 6 station's service and the cessation is not the choice of the affected TV Channel 6 station, the NCE–FM station will modify its facilities, within a reasonable transition period, to meet the requirements of this rule which would have applied if no adjustment to population for satellite station service had been made in its application.

(B) The transition period may not exceed 1 year from the date the NCE–FM station is notified by the TV Channel 6 station that the satellite station will cease to carry the affected TV Channel 6 stations's service or 6 months after the satellite station ceases to carry the affected TV Channel 6 station's service, whichever is earlier.

(iii) If any part of the predicted interference area is located outside the affected TV Channel 6 station's Area of Dominant Influence (ADI), outside the Grade A field strength contour (§ 73.683), and within the predicted city grade field strength contour (73.685(a)) of a TV broadcast station whose only network affiliation is the same as the only network affiliation of the affected TV Channel 6 station, the number of persons within that part will be subtracted. (For purposes of this provision, a network is defined as ABC, CBS, NBC, or their successors.) In addition, the ADI of an affected TV Channel 6 station and the program network affiliations of all relevant TV broadcast stations will be assumed to be as they were on the filing date of the NCE–FM application or June 1, 1985, whichever is later.

(iv) In calculating the population within the predicted interference area, an exception will be permitted upon a showing (*e.g.*, as survey of actual television reception) that the number of persons within the predicted interference area should be reduced to account for persons actually experiencing co-channel or adjacent channel interference to reception of the affected TV Channel 6 station. The area within which such a showing may be made will be limited to the area calculated as follows:

(A) The distances to the field strength contours of the affected TV Channel 6 station will be predicted according to the procedures specified in § 73.684, "Prediction of coverage," using the F(50,50) curves in Figure 9, §73.699.

(B) For each field strength contour of the affected TV Channel 6 station, there will be an associated co-channel or adjacent channel TV broadcast station interference contour, the value of which (in units of dBu) is defined as the sum of the affected TV Channel 6 station's field strength (in dBu) and the appropriate undesired-to-desired signal ratio (in dB) as follows:

Co-channel, normal offset, −22 dB
Co-channel, no offset, −39 dB
Adjacent channel, +12 dB

(C) The distances to the associated co-channel or adjacent channel TV broadcast station interference contour will be predicted according to the procedures specified in § 73.684, "Prediction of coverage," using the F(50,10) curves in Figure 9a, § 73.699.

(D) The area within which the showing of actual interference may be made will be the area bounded by the locus of intersections of a series of the affected TV Channel 6 station's field strength contours and the associated interference contours of the co-channel or adjacent channel TV broadcast station.

(4) The maximum permissible effective radiated power (ERP) and antenna height may be adjusted for vertical polarity as follows:

(i) If the applicant chooses to use vertically polarized transmissions only, the maximum permissible vertically polarized ERP will be the maximum horizontally polarized ERP permissible at the same proposed antenna height, calculated without the adjustment for television receiving antenna directivity specified in paragraph (e)(1)(iii) of this section, multiplied by either: 40 if the predicted interference area lies entirely outside the limits of a city of 50,000 persons or more; or 10 if it does not.

(ii) If the applicant chooses to use mixed polarity, the permissible ERP is as follows:

[H + (V/A)] is no greater than P
Where:
H is the horizontally polarized ERP in kilowatts for mixed polarity;
V is the vertically polarized ERP in kilowatts for mixed polarity;
A is 40 dB if the predicted interference area lies entirely outside the limits of a city of 50,000 persons or more, or 10 if it does not; and
P is the maximum permitted horizontally polarized-only power in kilowatts.

(f) *Channel 200 Applications.* No application for use of NCE–FM Channel 200 will be accepted if the requested facility would cause objectionable interference to TV Channel 6 operations. Such objectionable interference will be considered to exist whenever the 15 dBu contour based on the F(50,10) curves in § 73.333 Figure 1a would overlap the 40 dBu contour based on the F(50,50) curves in § 73.699, Figure 9.

6. A new 47 CFR 73.599 entitled "NCE–FM engineering charts," is added to read as follows:

§ 73.599 NCE–FM engineering charts.

This section consists of the following Figures 1 and 2.

BILLING CODE 6712-01-M

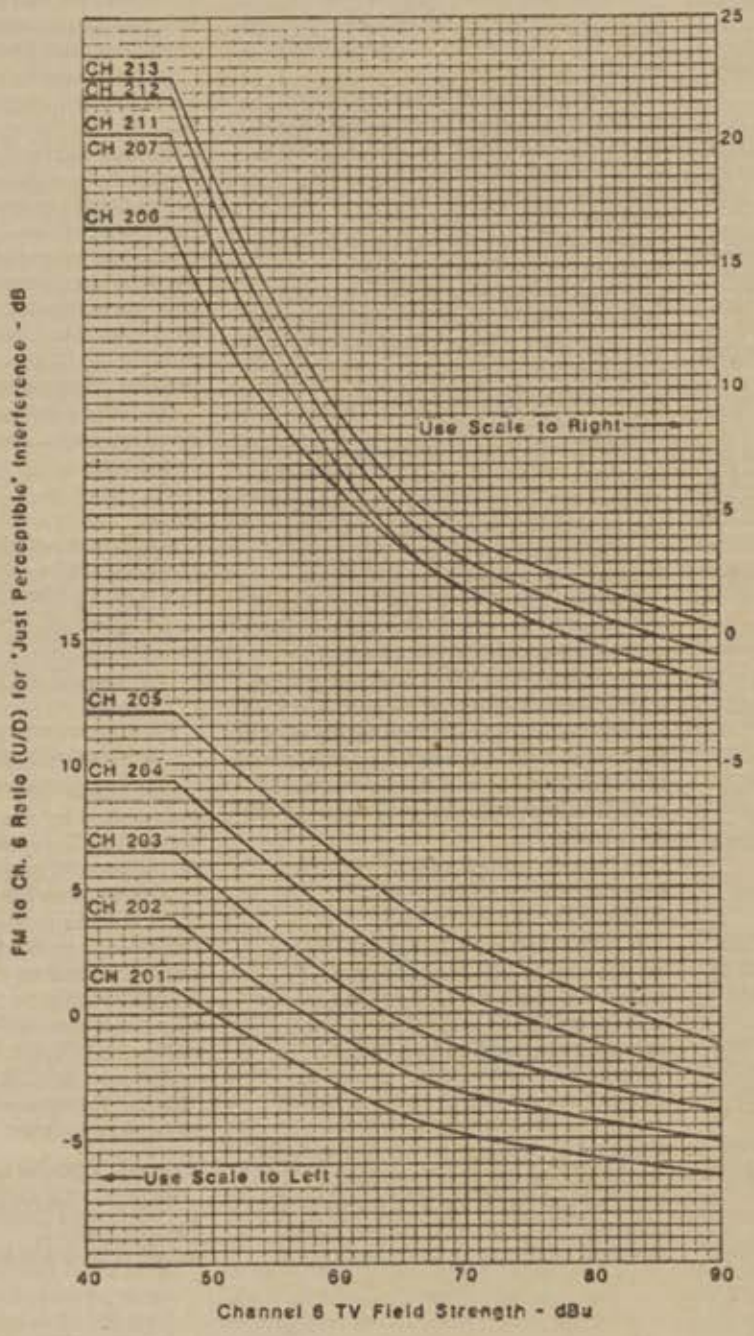

Figure 1

FM/TV 6 PROTECTION RATIOS

BASED ON MEDIAN RECEIVERS

CHANNELS 201-213

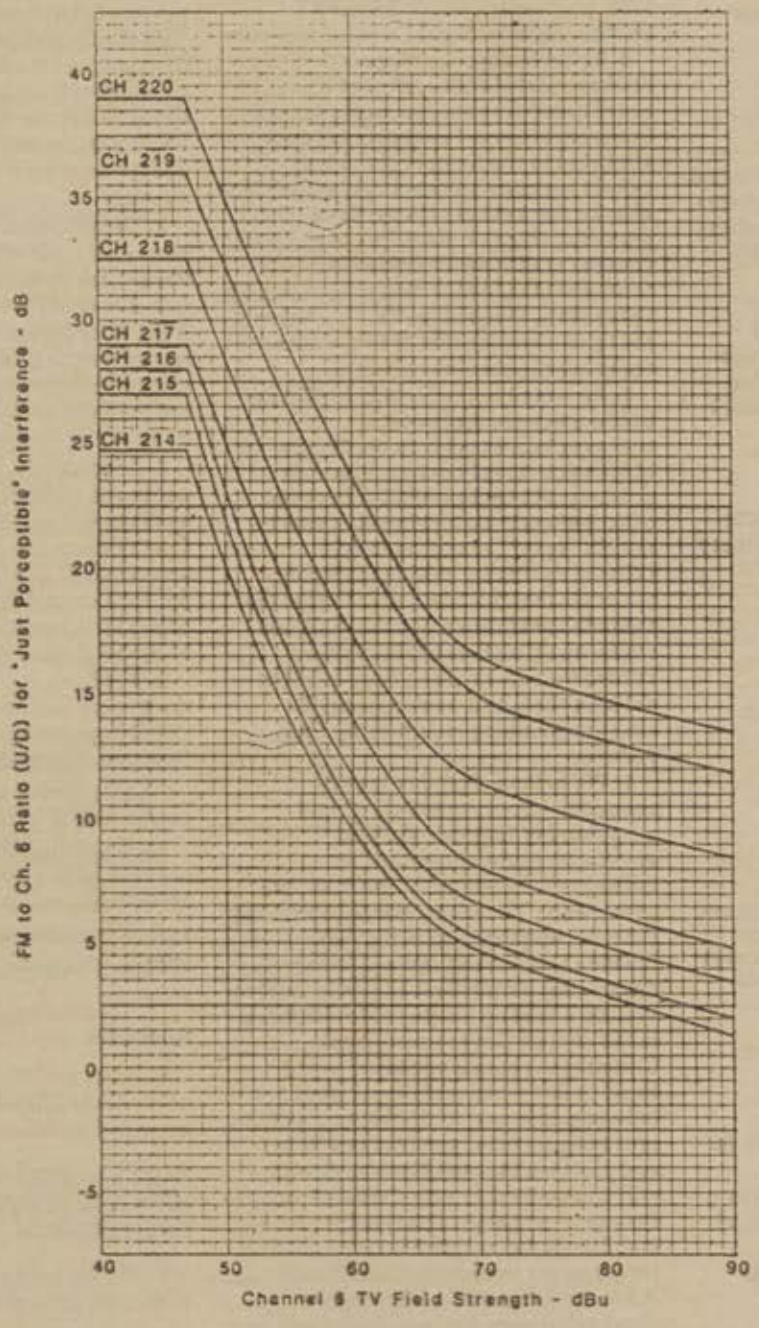

Figure 2

FM/TV 6 PROTECTION RATIOS
BASED ON MEDIAN RECEIVERS
CHANNELS 214-220

[FR Doc. 85-16294 Filed 7-8-85; 8:45 am]
BILLING CODE 6712-01-C

47 CFR Parts 81 and 83

[PR Docket No. 84-1298; RM-4825; FCC 85-337]

Medical Advisory Communications With Ships at Sea

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allows limited coast stations to use shared frequencies for transmitting medical advice to ships at sea. This action was requested by Medical Advisory Systems, Inc., a limited coast station licensee which provides around-the-clock medical advice on a contractual basis to ships and offshore platforms. The intended effect is to make available to seafarers around-the-clock medical advice regardless of their location at sea.

EFFECTIVE DATE: August 9, 1985.

FOR FURTHER INFORMATION CONTACT: Maureen Cesaitis, Private Radio Bureau (202) 632-7175.

SUPPLEMENTARY INFORMATION:

List of Subjects

47 CFR Part 81

Coast stations, Radio, Telephone.

47 CFR Part 83

Ship stations, Radio, Telephone, Vessels.

Report and Order (Proceeding Terminated)

In the matter of amendment of Parts 81 and 83 of the rules to provide frequencies for medical advisory communications with ships at sea (PR Docket No. 84-1298, RM-4825).

Adopted: June 27, 1985.
Released: July 3, 1985.

By the Commission.

1. On December 12, 1984, the Commission adopted a *Notice of Proposed Rule Making* (FCC 84-629, 50 FR 132) in the above captioned proceeding. The *Notice* was issued in response to a petition filed by Medical Advisory Systems, Inc. (MAS), requesting that frequencies be made available for worldwide medical assistance to ships and offshore platforms. MAS feels that the availability of medical advisory stations will measurably improve the health and well-being of seafarers. MAS provides medical advice on a contractual basis. MAS has been providing its service to oil companies, governmental entities, foreign fleets, and individuals since 1983, when it obtained a developmental authorization. It currently utilizes eight high frequencies (HF) in the shared Government/non-Government spectrum between 2030 and 27,500 kHz. Because immediate and reliable communications are imperative in a medical emergency, MAS's limited coast station also utilizes VHF frequencies and INMARSAT satellite links with public coast stations.

2. In the *Notice*, we proposed to allow limited coast stations to operate on coordinated frequencies in the shared Government/non-Government bands allocated to the fixed or fixed and mobile services between 2030 and 27,500 kHz for the exclusive purpose of providing ships or platforms at sea with medical advice and information. One comment was filed in this proceeding by Lykes Bros. Steamship, Co. Inc., voicing strong support for this proposal. No opposing comments were filed.

3. As stated in the Notice, MAS's HF traffic averages 300 medical emergencies per year. According to MAS, each initial contact is said to generate an average of 2.3 follow-up calls; between seven and eight cases remain "open" at any one time. Estimating that its case load doubles every six months, MAS argues that the availability of direct communications via its coast station not only saves critical time in an emergency but also reduces costs and avoids tying up maritime working channels for long periods.

4. We believe that this type of communications capability would considerably improve medical assistance to the thousands of individuals employed in the maritime community. Therefore, we are amending the rules as proposed in the Notice. Specific frequencies are not being designated for medical advisory service. We are allowing the use of frequencies in the shared Government/non-Government bands allocated to the fixed or fixed and mobile services between 2030 and 27,500 kHz by entities providing medical services to vessels and platforms at sea. Each applicant will be required to select the appropriate frequency or frequencies and we will coordinate the assignment with the U.S. Government Interdepartment Radio Advisory Committee. Because we expect that very few applicants will be interested in providing such specialized services, this case-by-case approach should allow the greatest flexibility and spectrum efficiency in fulfilling the need for maritime medical services.

5. Additionally, we are correcting § 81.132, which identifies authorized classes of emission. The correction incorporates the new emission designators used as a result of the 1979 World Administrative Radio Conference.

6. Pursuant to section 605(b) of the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), we certify that the new rules will not significantly impact a substantial number of small entities. This action makes available a number of frequencies for medical advisory communications between ship and shore. Since use of the frequencies is voluntary, no new equipment is required and no existing equipment is rendered obsolete.

7. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or record keeping, labeling, disclosure, or record retention requirements; and will not increase or decrease burden hours imposed on the public.

8. Accordingly, it is ordered, that under the authority contained in sections 4(i) and 303(c) and (r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(c) and (r), the Commission's rules are amended as set forth in the attached Appendix, effective August 9, 1985.

9. It is further ordered, that a copy of the Report and Order shall be sent to the Chief Counsel for Advocacy of the Small Business Administration.

10. It is further ordered, that this proceeding is terminated.

11. Regarding questions on matters covered in this document contact Maureen Cesaitis, (202) 632-7175.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

Parts 81 and 83 of Chapter I of Title 47 of the Code of Federal Regulations are amended as follows:

PART 81—STATIONS ON LAND IN THE MARITIME SERVICES AND ALASKA FIXED SERVICE

1. The authority citation for Part 81 continues to read as follows:

Authority: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064-1068, 1081-1105, as amended; 47 U.S.C. 151-155, 301-609; unless otherwise noted.

2. Section 81.132(a)(1) is amended in the "Classes of emission" column by adding new language opposite the entry "2035 to 27,500 kHz" to read as follows:

§ 81.132 Authorized classes of emission.

(a) * * *

Frequency band	Classes of emission
* * * * *	
2065 to 27,500 kHz	A1A on frequencies listed in § 81.206; A1A or F1B on frequencies listed in § 81.204(c); * * *
* * * * *	

3. New § 81.373 is added to read as follows:

§ 81.373 Medical advisory frequencies.

Frequencies in the shared Government/non-Government bands allocated to the fixed or fixed and mobile services between 2030 kHz and 27,500 kHz may be assigned to limited coast stations for communications related to the provision of medical treatment, medical advice or medical information. The FCC will not accept responsibility for protection of the stations from harmful interference caused by foreign operations. In the event that a complaint of harmful interference resulting from operation of these stations is received from a foreign source, the offending station must cease operation on the particular frequency concerned.

PART 83—STATIONS ON SHIPBOARD IN THE MARITIME SERVICES

4. The authority citation for Part 83 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609; 3 UST 3450, 3 UST 4726, 12 UST 2377, unless otherwise noted.

5. Section 83.351 is amended by adding a new paragraph (e) to read as follows:

§ 81.351 Frequencies available.

* * * * *

(e) Ship stations may communicate with limited coast stations that provide medical advisory service on the frequencies in the share Government/non-Government bands allocated to the fixed or fixed and mobile services between 2030 kHz and 27,500 kHz assigned to the limited coast station, subject to the conditions specified in § 81.373.

[FR Doc. 85-16293 Filed 7-8-85; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 12, 33 and 52

[Federal Acquisition Cir. 84-9]

Federal Acquisition Regulation

Correction

In FR Doc. 85-14972 beginning on page 25680 in the issue of Thursday, June 20, 1985, make the following corrections:

1. On page 25680, in the first column, in the last paragraph, in the first line, "test" should read "text".

33.104 [Corrected]

2. On page 25681, in the first column, in 33.104(b)(3), in the second line, "the" should read "and".

3. On the same page, in the second column, in 33.104(g)(2), in the second line, "of this section" should read "above".

BILLING CODE 1505-01-M

GENERAL SERVICES ADMINISTRATION BOARD OF CONTRACT APPEALS

48 CFR Part 6101

[Amdt. BOCA-1]

Rules of Procedure

Correction

In FR Doc. 85-15351 beginning on page 26764 in the issue of Friday, June 28, 1985, make the following correction:

The first page of "Form 3" was omitted and should appear as follows between pages 26770 and 26771:

BILLING CODE 1505-01-M

Form 3

Board of Contract Appeals

General Services Administration
Washington, DC 20405

SUBPOENA

OMB APPROVAL NO. 3090-0221

Appeal/Protest/Petition of

_____

_____

_____

GSBCA No. _____

Contract/Solicitation No.

_____

TO: _____

_____

_____

YOU ARE HEREBY COMMANDED to appear at _____ _____
(Room Number) (Building)

_____
(Street Number) (City) (State)

at _____ o'clock __ m., on the _____ day of _____, 19__,

to testify at a (deposition/hearing) in this case; and to bring with you[1] _____

_____

_____

_____

and to stay there until given permission to leave. This subpoena is issued at the request of (Appellant/Petitioner/Protester/Intervenor/Respondent).

Your appearance as ordered by this subpoena will entitle you to receive the fees and mileage provided by 28 U.S.C. § 1821 or other applicable law.

[1] *Strike the words "and bring with you" unless the subpoena is to require the production of documents or tangible things. In which case the documents and things should be designated in the blank space provided for that purpose. If testimony by an organization representative or designee is requested, describe with reasonable particularity the matters on which examination is requested.*

Proposed Rules

Federal Register
Vol. 50, No. 131
Tuesday, July 9, 1985

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE
Federal Crop Insurance Corporation

7 CFR Ch. IV

[Docket No. 2553S]

Crop Insurance Regulations—Various

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Withdrawal of notice of proposed rulemaking.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby publishes this notice for the purpose of withdrawing Notices of Proposed Rulemaking (NPRM) on various crop insurance regulations in Chapter IV of Title 7 of the Code of Federal Regulations updating the Appendix A to such regulations listing those counties where such crop insurance was available. The intended effect of this notice is to withdraw the NPRMs because the information regarding the availability of crop insurance is presently available from the service offices at the local level, thereby making the publication of these lists unnecessary. The authority for the promulgation of this notice is contained in the Federal Crop Insurance Act, amended.

EFFECTIVE DATE: July 9, 1985.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C., 20250, telephone (202) 447–3325

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation No. 1512–1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review dates established for these regulations are contained in the supplementary material accompanying the last republication of each regulation in the **Federal Register**.

Merritt W. Sprague, Manager, FCIC, has determined that this action (1) is not a major rule as defined by Executive Order No. 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects or competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order No. 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

It has been the practice of FCIC, when publishing each of its regulations for insuring crops, to include an Appendix listing those counties where such crop insurance is available. The provisions requiring such publication were made part of each regulation in subsection 1 (Example: § 418.1 Availability of wheat crop insurance).

Merritt W. Sprague, Manager, FCIC, has determined that, due to the increasing number of counties where FCIC offers crop insurance on a variety of crops, the costs of printing in the **Federal Register** and subsequent costs involved in codification in the Code of Federal Regulations (CFR), has become excessive and outweigh whatever benefit is derived from codification.

Information regarding the availability of crop insurance in any given county is presently available from FCIC service offices at the local level, making the publication of these lists unnecessary.

Because of the actions taken above, FCIC has determined that the proposed rulemakings published in the **Federal Register** to update county listings are no longer necessary.

Accordingly, FCIC hereby withdraws the notices of proposed rulemakings as follows:

1. 7 CFR Part 411 [Amendment No. 4 to the Grape Regulations], published on Monday, July 9, 1984, at 49 FR 27949.
2. 7 CFR Part 427 [Amendment No. 1 to the Oat Regulations], published on Thursday, June 14, 1984, at 49 FR 24522.
3. 7 CFR Part 430 [Amendment No. 2 to the Sugar Beet Regulations], published on Thursday, June 14, 1984, at 49 FR 24528.
4. 7 CFR Part 434 [Amendment No. 3 to the Tobacco Dollar Regulations], published on Monday, July 2, 1984, at 49 FR 27160.
5. 7 CFR Part 435 [Amendment No. 4 to the Tobacco Quota Regulations], published on Wednesday, June 27, 1984, at 49 FR 26238.
6. 7 CFR Part 436 [Amendment No. 3 to the Tobacco Guaranteed Regulations], published on Monday, July 9, 1984, at 49 FR 27950.
7. 7 CFR Part 437 [Amendment No. 3 to the Canning and Freezing Sweet Corn Regulations], published on Monday, July 9, 1984, at 49 FR 27951.
8. 7 CFR Part 438 [Amendment No. 3 to the Canning and Processing Tomato Regulations], published on Tuesday, June 12, 1984, at 49 FR 24144.
9. 7 CFR Part 446 [Amendment No. 1 to the Walnut Regulations], published on Monday, July 2, 1984, at 49 FR 27162.
10. 7 CFR Part 447 [Amendment No. 1 to the Popcorn Regulations], published on Tuesday, June 12, 1984, at 49 FR 24145.

Done in Washington, D.C., on June 27, 1985.

Peter F. Cole,

Secretary, Federal Crop Insurance Corporation.

Dated: June 27, 1985.

Approved by:

Edward Hews,

Acting Manager.

[FR Doc. 85–16236 Filed 7–8–85; 8:45 am]

BILLING CODE 3410–08–M

Agricultural Marketing Service

7 CFR Part 1124

[Docket No. AO-368-A14]

Milk in the Oregon-Washington Marketing Area: Hearing on Proposed Amendments to Tentative Marketing Agreement and Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of public hearing on proposed rulemaking.

SUMMARY: The hearing is being held to consider proposals by the Oregon Milk Marketing Federation, Darigold, Inc. and Umpqua Dairy Products Company to amend the Oregon-Washington milk marketing order. The Federation's proposal would reduce supply plant shipping standards and the amount of producer milk that must be delivered to pool plants and still be priced under the order. Two of Darigold's proposals also would allow more producer milk to be received directly at nonpool plants without losing pool status. A third Darigold proposal would increase the percentage by which base pounds are computed for a producer who has no earned daily base to 80 percent for every month from a percentage which varies monthly from 45 to 70 percent.

Umpqua Dairy Products has proposed that handlers receiving milk from producers choosing to be paid on the basis of their Federal order base be able to pay such producers directly, and that nonfluid milk receipts used in Class II products be allocated to Class II rather than to Class III.

DATE: The hearing will convene at 9:30 a.m., local time, on July 24, 1985.

ADDRESS: The hearing will be held at Nendel's Motor Inn, 9900 S. W. Canyon Road, Portland, Oregon 97225, in the Oregonian Room–A.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447–2089.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirement of Executive Order 12291.

Notice is hereby given of a public hearing to be held at Nendel's Motor Inn, 9900 S. W. Canyon Road, Portland, Oregon 97225, in the Oregonian Room–A, beginning at 9:30 a.m., local time, on July 24, 1985, with respect to proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Oregon-Washington marketing area.

The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

The purpose of the hearing is to receive evidence with respect to the economic and marketing conditions which relate to the proposed amendments, hereinafter set forth, and any appropriate modifications thereof, to the tentative marketing agreement and to the order.

Actions under the Federal milk order program are subject to the "Regulatory Flexibility Act" (Pub. L. 96–354). This act seeks to ensure that, within the statutory authority of a program, the regulatory and information requirements are tailored to the size and nature of small businesses. For the purpose of the Federal order program, a small business will be considered as one which is independently owned and operated and which is not dominant in its field of operation. Most parties subject to a milk order are considered as a small business. Accordingly, interested parties are invited to present evidence on the probable regulatory and informational impact of the hearing proposals on small businesses. Also, parties may suggest modifications of these proposals for the purpose of tailoring their applicability to small businesses.

List of Subjects in 7 CFR Part 1124

Milk marketing orders, Milk, Dairy products.

The authority citation for Part 1124 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended (7 U.S.C. 601–674).

PART 1124—[AMENDED]

The proposed amendments, as set forth below, have not received the approval of the Secretary of Agriculture.

Proposed by Oregon Milk Marketing Federation (Farmers Cooperative Creamery Association, Oregon Jersey Cooperative, and Tillamook County Creamery Association):

Proposal No. 1

Reduce the percentage of receipts that supply plants must ship to pool distributing plants in order to be included in the marketwide pool. Shipping standards would be reduced from 50 percent in the months of October, November and December, 40 percent in the months of September, January and February, and 30 percent in the months of March through August to 40 percent in the months of September through November and 30 percent in the months of December through August.

Proposal No. 2

Change the present requirement that at least one day's production of each producer's milk must be delivered to a pool plant during each month of September, October and November in order for the producer's milk to be eligible for unlimited diversion to nonpool plants during the months of December through August. The proposed change would require that a producer's milk be received at a pool plant at least once per month for three consecutive months on a one-time basis rather than on an annual basis and that there be no subsequent interruption in the dairy farmer's producer status in order for the producer's milk to be eligible for unlimited diversions in subsequent months to nonpool plants.

Proposal No. 3

Increase the allowable percentage of producer milk which a cooperative association or handler may divert to nonpool plants from 60 percent each month to 70 percent during the months of September through November, January and February and 80 percent during December, March and April. No diversion limits would be effective during the months of May through August.

Proposed by Darigold, Inc.:

Proposal No. 4

In addition to eliminating the annual delivery requirement for each producer's milk (as in Proposal No. 2), delete the second sentence of § 1124.11(a), which requires that a new producer's milk be delivered to a pool plant at least once during each of the two months following the original shipment.

Proposal No. 5

Change the percentages in the table in § 1124.65(b) for determining base pounds for producers who do not have assigned daily bases from rates ranging from 45 to 70 percent per month to a straight 80 percent each month.

Proposal No. 6

Increase the allowable percentage of producer milk which a cooperative association or handler may divert to nonpool plants from 60 percent each month to 80 percent during the months of September through April, with no

diversion limits effective during the months of May through August.

Proposed by Umpqua Dairy Products Company:

Proposal No. 7

Amend the allocation sequence in § 1124.46(a) to provide that the fluid equivalent of nonfluid milk receipts used to produce Class II products be deducted from Class II use rather than from Class III.

Proposal No. 8

Amend § 1124.82(b) to provide that nonmember producers who elect to be paid on the basis of the Federal base plan may be paid directly by their handler rather than by the market administrator.

Proposed by the Dairy Division, Agricultural Marketing Service:

Proposal No. 9

Make such changes as may be necessary to make the entire marketing agreement and the order conform with any amendments thereto that may result from this hearing.

Copies of this notice of hearing and the order may be procured from the Market Administrator, P.O. Box 23606, Portland, Oregon 97223, or from the Hearing Clerk, Room 1079, South Building, United States Department of Agriculture, Washington, D.C. 20250, or may be inspected there.

Copies of the transcript of testimony taken at the hearing will not be available for distribution through the Hearing Clerk's Office. If you wish to purchase a copy, arrangements may be made with the reporter at the hearing.

From the time that a hearing notice is issued and until the issuance of a final decision in a proceeding, Department employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an ex parte basis with any person having an interest in the proceeding. For this particular proceeding, the prohibition applies to employees in the following organizational units:

Office of the Secretary of Agriculture
Office of the Administrator, Agricultural Marketing Service
Office of the General Counsel
Dairy Division, Agricultural Marketing Service (Washington Office only)
Office of the Market Administrator, Oregon-Washington Marketing Area

Procedural matters are not subject to the above prohibition and may be discussed at any time.

Signed at Washington, D.C., on: July 3, 1985.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 85-16315 Filed 7-8-85; 8:45 am]

BILLING CODE 3410-02-M

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 85-034]

African Swine Fever

Correction

In FR Doc. 85-15538, beginning on page 26782 in the issue of Friday, June 28, 1985, make the following corrections:

On page 26784, in the third column,

a. In the second line of § 94.8(a)(3)(iv), "(a)(e)(i)(B)" should have read "(a)(3)(i)(B)".

b. In the eighth line of § 94.8(a)(3)(iv)(B), "(a)(3)(i)(c)" should have read "(a)(3)(i)(C).

BILLING CODE 1505-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 210

[Release Nos. 33-6590; 34-22173; File No. S7-29-85]

Disclosure Amendments to Regulation S-X Regarding Repurchase and Reverse Repurchase Transactions

AGENCY: Securities and Exchange Commission.

ACTION: Proposed Rulemaking and Advance Notice of Possible Rulemaking.

SUMMARY: The Commission is today publishing for comment proposed rules amending the disclosure requirements of Regulation S-X. Such amendments would require disclosure regarding the nature and extent of a registrant's repurchase and reverse repurchase transactions and the degree of risk involved in these transactions. In addition the Commission is providing advance notice of possible rulemaking in the area of financial assets and transactions. Finally, the Commission is today authorizing the Chief Accountant to send a letter to the Financial Accounting Standards Board recommending that a project be added to the Board's agenda to deal with the accounting issues involved in financial assets and transactions.

DATE: Comments must be received on or before August 30, 1985.

ADDRESS: Five copies of comments should be submitted to John Wheeler, Secretary, Securities and Exchange Commission 450 Fifth St., NW., Washington, D.C. 20549. Comment letters should refer to File No. S7-29-85. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth St., NW., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Michael P. McLaughlin or Laurel R. Bond, Office of the Chief Accountant (202-272-2130) or Howard P. Hodges Jr., Division of Corporation Finance (202-272-2553), Securities and Exchange Commission 450 Fifth St., NW., Washington D.C. 20549.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

The Commission is proposing to require disclosure in certain circumstances of the nature and extent of a registrant's repurchase and reverse repurchase transactions and the degree of risk involved. The Commission is proposing these amendments to deal with an immediate need to improve disclosure with respect to these transactions. These proposals would call for separate balance sheet classification and footnote disclosure when either the aggregate carrying amount of assets sold under agreement to repurchase chase, or assets purchased under agreement to resell, exceed 10% of total assets. Further, when the risk of loss from these transactions (as defined) exceeds 5% of stockholders' equity, certain information, including the names of the parties to the agreements, woud be called for.

The Commission has monitored through the review process and in its oversight role the growing array of complex financial instruments that have been introduced in the marketplace. Some of these instruments raise accounting and disclosure issues.[1] Because the Commission believes that it is essential to address the broad areas of disclosure and accounting for financial assets and transactions on a comprehensive basis as expeditiously as possible, it has initiated a project to

[1] The Commission is aware that the American Institute of Certified Public Accountants ("AICPA") recently formed a special task force to monitor developments and to consider accounting issues in volved in the broad of financial instruments. The Commission endorses this action as well as the Financial Accounting Standards Board's ("FASB") Emerging Issues Task Force and encourages the development of timely accounting guidance as necessary.

consider the need for additional rulemaking or other guidance in this area to ensure that investors and other users of the Commission's disclosure documents are provided with full and fair disclosure about such transactions. The Commission, therefore, requests specific comments (particularly from users of financial statements) as to the adequacy of accounting and financial reporting in this area. Specific comment is also requested on the various types of financial transactions and instruments that may need to be addressed (e.g., interest rate swaps, securitized assets and sales of assets with "put" arrangements) and suggestions as to how they should be addressed. Further, the Commission's staff is currently studying the need for market value disclosure for certain financial assests including a requirement to make such disclosures on the face of the balance sheet along with an analysis of changes in market value in a footnote, thereto.[2] Commentators are specifically invited to provide information as to which financial assets should be covered as well as the content of footnote disclosure.

Finally, the Commission has determined that there are broad-based accounting measurement and recognition issues involved in repurchase and reverse repurchase and other financial instrument transactions that may best be addressed by the private-sector standard setters. Therefore, in connection with its longer-term project and recognizing that the issues in such a project affect SEC reporting as well as other entities in various industries (including publicly held banks and savings and loans that report to other government agencies), the Commission has today authorized the Chief Accountant to send a letter to the FASB recommending that the FASB add a project to its agenda to deal with the accounting issues involved in the broad area of financial assets and transactions.

II. Background

A. *Repurchase Transactions*—Generally, "selling" owned securities or other assets with an unconditional agreement to repurchase the same securities or other assets at a specific point in time has been considered a collateralized borrowing for accounting purposes. Such transactions are commonly referred to as "repurchase transactions."[3]

Although financing treatment may be both logical and appropriate when an asset is sold under agreement to repurchase, and the same asset is in fact repurchased within a very short period of time, it appears that the borrower/seller generally loses control over and access to the assets sold under the repurchase agreement. This exposes the borrower to a risk of loss (measured by the difference between the carrying value of the assets sold including accrued interest plus any cash or other assets on deposit to secure the repurchase obligation, less the amount borrowed against it) in the event that the other party to the transaction does not fulfill its part of the agreement.

In contrast to the more simple form of transaction described above, the Commission has seen more complicated repurchase transactions where (1) the initial term of the agreement was not for a very short period of time, but rather was for as long as a year (this agreement could also be extended at maturity), (2) the same mortgage-backed securities were not repurchased (dollar repurchase agreements) and (3) the initial purchase of specifically identified mortgage-backed securities was financed by a repurchase transaction (selling the purchased securities to the dealer with a simultaneous agreement to buy them back at a later date). Further, when the agreements involve dollar repurchase transactions of mortgage-backed securities (e.g., GNMAs), the borrower/seller relinguishes the right to receive principal and interest payments on the underlying security because the mortgage pool underlying the security is no longer specifically identified and the security is no longer registered in the borrower/seller's name.

B. *Reverse Repurchase Transactions*—Purchasing securities or other assets with an unconditional agreement to sell the same securities or other assets back to the seller at an agreed upon later date is generally considered to be a short-term investment/lending secured by the underlying assets. These transactions are generally referred to as "reverse repurchase transactions."

The accounting and disclosure questions regarding reverse repurchase transactions center on whether the purchaser/lender's interest in securities or other assets purchased is in fact secured (and if so whether the market value of the underlying assets is sufficient to protect the purchaser/lender) in the event of default by the seller/borrower.

III. Recent Developments

Following certain recent developments in the government securities market, both the accounting profession and the private-sector standard setters initiated various projects relating to repurchase and reverse repurchase transactions. On several occasions the Commission's staff met with representatives of certain specialized industry committees of the AICPA, the FASB, the AICPA's Auditing Standards Board ("ASB") and the Governmental Accounting Standards Board ("GASB") to emphasize the staff's concerns about accounting, auditing and disclosure issues.

The Commission notes that the following initiatives are underway:

- The ASB formed a special task force to look into the *auditing* issues. This task force concluded that while existing auditing standards are adequate, additional educational guidance is needed. The task force also recommended, among other things, that a special task force be formed to monitor developments in the area of financial instruments and that this task force provide timely auditing guidance, as needed, when new financial products are introduced. The ASB is expected to publish its report in the near future.
- The AICPA Savings and Loan Committee is working on the issuance of a Statement of Position concerning *disclosure* issues related to repurchase and reverse repurchase transactions which are prevalent in the thrift industry.[4] The AICPA is attempting to

[2] Under present practice certain financial assets are carried at cost, some at lower of cost or market and others at market value. In addition, practice varies among industries.

[3] Throughout this release, a sale with an agreement to repurchase will be designated as a "repurchase transaction," and a purchase with an agreement to sell back will be designated as a "reverse repurchase transaction." Certain entities (e.g. savings and loans and investment companies) may use different terminology to describe the same transaction. (See Investment Company Act Release No. 10666 [April 18, 1979] 44 FR 25128.)

[4] The Savings and Loan Committee is expected to deal with disclosure in two areas: repurchase and reverse repurchase agreements and mortgage-backed certificates. The Commission staff expects the Committee to recommend disclosure of an institution's activity in repurchase and reverse repurchase agreements (e.g., amounts involved at historical cost and at market) as well as a description of the institution's policies with respect to these transactions (e.g., delivery of collateral and material concentrations).

In addition, the Committee is considering a change in practice regarding balance sheet presentation of an institution's investments in mortgage-backed certificates. Savings and loans have generally included investments in mortgage-backed certificates in their loan portfolios because the instruments were generally supported by first mortgage loans. The Committee is expected to recommend that such certificates be reported separately in the balance sheet in recognition of the

Continued

have a final Statement of Position in place before year end 1985. This document would supplement their recently issued Statement of Position 85-2 *"Accounting for Dollar Repurchase-Dollar Reverse Repurchase Agreements by Sellers-Borrowers"* on *accounting* for certain repurchase transactions.

• The GASB placed the subject of accounting and disclosure for repurchase-reverse repurchase transactions on its agenda and established a special task force to address these issues from the municipalities' viewpoint. The GASB expects to issue an exposure draft of an accounting standard dealing principally with disclosure in the near future.

The Commission will monitor developments in this area and consider the actions of these groups as it pursues its rulemaking initiatives.

IV. Proposed Changes to Regulation S-X

To some extent, existing requirements of Regulation S-X either directly or indirectly deal with disclosures concerning repurchase and reverse repurchase transactions. Articles 4 and 5 (17 CFR 210.4-01 et seq. and 210.5-01 et seq., respectively) in certain instances require cost and market value disclosure of investment securities as well as a description of assets subject to lien. Article 9 (17 CFR 210.9-01 et seq.), which applies to bank holding companies, specifically requires cost and market value of certain obligations of the U.S. Government as well as balance sheet disclosure of repurchase, reverse repurchase and similar transactions. Finally, Schedule 12 to Article 12 (17 CFR 210.12-12) which applies to management investment companies, specifically requires the following information for each agreement under which securities purchased are subject to resale: (1) The name of the party or parties to the agreement, (2) the date of the agreement, (3) the total amount to be received at termination of the agreement, (4) the termination date and (5) a description of the securities subject to the agreement.

In addition, under Item 303 of Regulation S-K (17 CFR 229.303), registrants have an obligation to include in the management's discussion and analysis ("MD&A") appropriate disclosure of any material impact on the registrant's liquidity and operations, or risk to the registrant due to significant exposure as a result of repurchase and reverse repurchase transactions.[5]

The proposed amendments to Regulation S-X are intended to elicit more useful and uniform disclosure by registrants regarding repurchase and reverse repurchase transactions.[6] These proposed amendments would require disclosure of the nature and extent of a registrant's repurchase and reverse repurchase transactions and the degree of risk involved from the borrower's and lender's viewpoint.

Specifically, the Commission believes that where a registrant is engaged in a significant amount of repurchase or reverse repurchase transactions (proposed to be defined as an amount exceeding 10% of total assets) the amounts involved should be disclosed as a separate line item in the balance sheet. Parenthetical disclosure of the market value of assets purchased under agreement to resell would also be called for in the balance sheet, only to the extent such assets are in the possession of the registrant or its third party agent.

Furthermore, the Commission believes there should be additional footnote disclosure. For repurchase transactions, the proposed footnote disclosure would include: (1) Information about the type of assets sold under agreement(s) to repurchase (including carrying value, cost and yield); (2) the term and maturities of the agreement(s); and (3) the party to the agreement(s) when the amount at risk with any one counterparty exceeds 5% of stockholders' equity. For reverse repurchase transactions, the proposed disclosure would include: (1) Information about the term of the agreement(s); (2) the registrant's policies regarding physical possession of the underlying assets and provisions to ensure that the market value of the underlying assets remains sufficient to protect the registrant in the event of default by the counterparty and (3) information, including the name of the party to the agreement(s), about material concentrations (proposed to be defined as an amount in excess of 5% of stockholders' equity) if the registrant is exposed to risk of loss in the event the counterparty fails to fulfill its part of the agreement(s). The Commission requests specific comment on the proposed disclosure thresholds, as well as the content of the footnote disclosure, including additional or alternative disclosure that would be useful and cost effective.

V. Request for Comment

The Commission invites written comments on the proposed amendments to Regulation S-X and the advance notice of possible rulemaking as described, herein. Pursuant to section 23(a)(2) of the Securities Exchange Act, the Commission has considered the impact of these proposals on competition and it is not aware at this time of any burden that such proposals, if adopted, would impose on competition. However, the Commission specifically invites comments as to whether the proposed amendments would have an adverse effect on competition. Comments on this inquiry will be considered by the Commission in complying with its responsibilities under the Act.

List of Subjects in 17 CFR Part 210

Accounting, Reporting and recordkeeping requirements, Securities.

Statutory Basis and Text of Amended Rules

Pursuant to sections 6, 7, 8, 19 and 19(a) (15 U.S.C. 77f, 77g, 77h, 77j, 77s(a)) of the Securities Act of 1933; sections 12, 13, 14, 15(d) and 23(a) (15 U.S.C. 78*l*, 78m, 78n, 78o(d), 78w(a)) of the Securities Act of 1934; sections 5(b), 14 and 20(a) (15 U.S.C 79e(b), 79n, 79t(a)) of the Public Utility Holding Company Act of 1935; and sections 8, 30, 31, and 38(a) (15 U.S.C. 80a-8, 80a-29, 80a-30, 80a-37(a)) of the Investment Company Act of 1940, the Commission hereby proposes to amend 17 CFR Chapter II as follows:

PART 210—FORM AND CONTENT AND REQUIREMENTS FOR FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, INVESTMENT COMPANY ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975

1. The authority citation for Part 210 would continue to read in part as follows:

Authority: Secs. 6, 7, 8, 10, 12, 13, 15, 19, 23, 48 Stat. 78, 79, as amended, 81, as amended, 85, as amended, 892 as amended, 894, 895, as amended, 901, as amended, secs. 5, 14, 20, 49

fact that they are a more liquid marketable investment than the underlying loans. The Committee is also expected to recommend disclosure of the market value of the mortgaged backed certificates. The Commission's staff strongly supports the Savings and Loan Committee's initiative and expects to recommend a similar approach in a scheduled project regarding market value disclosures for financial assets.

[5] The Commission is aware that because of the nature of these transactions, they can be timed to close at particular points in time. If a registrant engages in transactions which result in amounts which would otherwise be reportable if they existed at reporting dates but closes them before the reporting dates, the Commission believes this should be discussed in the MD&A.

[6] To the extent that the proposal would elicit the same information that is presently required by schedule 12 to Article 12, it is expected that management investment companies would continue to comply with the requirements of that schedule.

Stat. 812, 827, 833, secs. 8, 30, 31, 38, 54 Stat. 803, 836, 838, 841; 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78*l*, 78m, 78o, 78w, 79e, 79n, 79t, 80a–8, 80a–29, 80a–30, 80a–37 * * *

2. By adding paragraph (m) to § 210.4–08 to read as follows:

§ 210. 4–08 General notes to financial statements.

* * * * *

(m) *Repurchase and reverse repurchase transactions.*

(1) *Repurchase transactions ("assets sold under agreements to repurchase").* (i) If, as of the most recent balance sheet date, the carrying amount of securities or other assets sold under agreements to repurchase ("repurchase transactions") exceeds 10% of total assets: (A) Disclose separately in the balance sheet the aggregate amount of liabilities incurred pursuant to repurchase transactions including accrued interest payable thereon; and (B) disclose in an appropriately captioned footnote containing a tabular presentation, segregated as to type of assets sold under agreements to repurchase (e.g., U.S. Treasury obligations, U.S. Government agency obligations and loans), the following information for each transaction or group of transactions maturing (*1*) overnight; (*2*) term up to 30 days; (*3*) term of 30 to 90 days; (*4*) term over 90 days and (*5*) demand:

(*i*) The carrying amount, market value and yield on the assets sold under agreement to repurchase, including accrued interest plus any cash or other assets on deposit under the repurchase transactions as of the balance sheet date; and

(*ii*) The repurchase liability asociated with such transaction or group of transactions and the interest rate(s) thereon.

(ii) Notwithstanding paragraph (m)(1)(i) of this section, if, as of the most recent balance sheet date, the "amount at risk" as a result of repurchase transactions with any one counterparty (or group of related counterparties) exceeds 5% of stockholders' equity (or in the case of investment companies, net asset value), registrants should disclose the same information as that called for by paragraph (m)(1)(i)(B) of this section separately for each such counterparty (or group of related counterparties), including the name of each such entity. The amount at risk is defined as the carrying value of the assets sold under agreement to repurchase including accrued interest plus any cash or other assets on deposit to secure the repurchase obligation less the amount borrowed against it (adjusted for accrued interest). (Cash deposits in connection with repurchase transactions shall not be reported as unrestricted cash pursuant to rule 5–02.1.)

(2) *Reverse repurchase transactions ("assets purchased under agreements to resell").* (i) If, as of the most recent balance sheet date, the aggregate carrying amount of securities or other assets purchased under agreement to resell ("reverse repurchase transactions") exceeds 10% of total assets: (A) Disclose separately such amount in the balance sheet; (B) parenthetically on the face of the balance sheet disclose the aggregate market value of assets held by the registrant or a third party agent that has affirmatively agreed with the registrant to act as custodian for the registrant pursuant to such reverse repurchase transactions; and (C) disclose in an appropriately captioned footnote, (*1*) the registrant's policy with regard to taking possession of securities or other assets purchased under agreement to resell, and (*2*) the terms of reverse repurchase agreements including at a minimum, the maturities, interest rates, and whether or not there are any provisions to ensure that the market value of the underlying assets remains sufficient to protect the registrant in the event of default by the counterparty and if so, the nature of those provisions. (ii) If, as of the most recent balance sheet date, the aggregate amount of reverse repurchase transactions with any one counterparty (or group of related counterparties), exceeds 5% of stockholders' equity (or in the case of investment companies, net asset value) and the assets subject to these agreements are not in the possession of the registrant or a third party agent that has affirmatively agreed with the registrant to act as custodian for the registrant, disclose the amount of such assets purchased under agreement to resell with each such counterparty, naming the entity and describing the terms of the agreement(s).

Regulatory Flexibility Act Analysis

John S.R. Shad, Chairman of the Commission, has certified that the proposed amendment to Regulation S–X will not have a significant economic impact on any entity subject to its provisions, and therefore, will not have a significant economic impact on a substantial number of small entities. This certification, including the reasons therefor, is attached to the release.

By the Commission.

John Wheeler,

Secretary.

June 27, 1985.

Regulatory Flexibility Act Certification

I, John S.R. Shad, Chairman of the Securities and Exchange Commission, hereby certify, pursuant to 5 U.S.C. 605(b) that the proposed amendments to Regulation S–X to require disclosure regarding certain repurchase and reverse repurchase transactions, contained in Securities Act Release No. 6590 will not have a significant economic impact on a substantial number of small entities. The reasons for this certification is that it is anticipated that the effects of the amendments, if adopted, will not be significant for any class of registrants because existing requirements of Regulation S–X either directly or indirectly deal with disclosures concerning repurchase and reverse repurchase transactions and the required information should be readily available from the existing books and records of the reporting entity.

Dated: June 27, 1985.

John S.R. Shad,

Chairman.

[FR Doc. 85–16186 Filed 7–8–85; 8:45 am]

BILLING CODE 8010–01–M

17 CFR Part 240

[Release Nos. 33–6595; 34–22198; IC–14611; File No. S7–34–85]

Proposed Amendments to Tender Offer Rules

AGENCY: Securities and Exchange Commission.

ACTION: Proposed amendment to rules.

SUMMARY: The Securities and Exchange Commission is publishing for comment a proposed new rule pertaining to third-party tender offers which would codify the Commission's position as to currently applicable requirements under the Williams Act. The proposed rule would make explicit that a bidder's tender offer must be open to all holders of the class of securities subject to the tender offer, and that all security holders must be paid the highest consideration offered to any security holder. The Commission also is proposing to amend an existing rule to provide that a tender offer must remain open for ten business days upon the announcement of an increase in the amount of securities being sought by the bidder.

DATE: Comments should be received on or before September 9, 1985.

ADDRESSES: Comments should be submitted in triplicate to John Wheeler, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Comment letters should refer to File No. S7–34–85. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Thomas E. Sweeney, Jr., (202) 272–2589, Office of Disclosure Policy, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Commission is proposing for comment amendments to Regulations 14D and 14E [1] pertaining to tender offers. This release contains an executive summary of the proposed action, a description of the existing Commission interpretive position, and the proposals and a synopsis thereof.

I. Executive Summary

With respect to tender offers, the Williams Act's statutory purpose of investor protection [2] is implemented through disclosure requirements, substantive provisions and antifraud protections. A major aspect of the legislative effort to protect investors was to avoid favoring either management or the takeover bidder.[3] In implementing this policy of neutrality, the Commission has administered the Williams Act in an even-handed fashion favoring neither side in a contest. Also implicit in these provisions, and necessary for the functioning of the Williams Act, are the requirements that a bidder make a tender offer to all security holders of the class of securities which is the subject of the offer and that the offer be made to all holders on the same terms.

The investor protection purposes of the Exchange Act would not be achieved without these requirements because tender offers could be extended to some security holders but not others or to all security holders but on different terms. Accordingly, since the Williams Act was enacted, the Commission, with certain limited exceptions, has taken the position that (i) a tender offer must be extended to all holders of the class of securities which is the subject of the offer (the "all-holders requirement"); and (ii) all such holders must be paid the highest consideration offered under the tender offer (the "best-price rule").[4]

Although the Commission's position concerning the all-holders requirement is a widely known and generally accepted tender offer practice, questions have arisen recently regarding the applicability of the all-holders requirement to issuer tender offers.[5] The Commission believes these questions also may bear on the all-holders requirement with respect to third-party tender offers and on the best-price rule. To provide clarity and certainty, the Commission is proposing a rule to codify these positions.

Specifically, proposed Rule 14d–10 would require a bidder in making a tender offer under section 14(d) of the Exchange Act:

- To extend the offer to all security holders who own shares of the class of securities subject to the offer; and
- To pay every tendering security holder the highest consideration offered to any other security holder at any time during the tender offer and, if more than one type of consideration is offered, that the types be substantially equivalent in value and the highest consideration of any type offered to any security holder is paid to any other security holder accepting that type of consideration.

The proposal would apply to third-party tender offers.[6]

While proposed Rule 14d–10 is not applicable until adoption and effectiveness, the Commission's interpretations of the Williams Act discussed in this release apply until final action is taken on the proposal. To the extent ambiguity may have arisen, the discussion set forth below concerning the all-holders requirement and the best-price rule is intended to resolve questions regarding their applicability.[7] This discussion first addresses the Commission's current interpretive position, and then describes proposed Rule 14d–10, which would codify this position.

The Commission also is proposing to amend Rule 14e–1(b) [8] to require that a tender offer remain open for at least ten business days from the announcement of an increase in the amount of securities being sought by the bidder. The Commission is proposing that such amended offers remain open for the same period of time currently required for increases in the consideration offered or the dealer's soliciting fees to allow time for shareholders to consider the offer as amended.

II. Commission Position

Equal Treatment of Security Holders

As noted above, the Commission interprets the Williams Act as containing an implicit requirement for equal treatment of security holders. This interpretation requires a tender offer subject to section 14(d) to be made to all security holders on the same basis.

The all-holders requirement is a consequence of making such a tender offer and, therefore, is unrelated to the determination of whether or not a tender offer has been made. Thus, the fact that a tender offer is made to less than all the holders of a class of a security, or that different consideration is offered to different holders of the same class of securities, does *not* mean that a tender offer has *not* been made under the Williams Act. Rather, if such a transaction is found to be a tender offer, then the tender offer would *not* have been made in compliance with the all-holders requirement.

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[1] 17 CFR 240.14d–1–101 and 240.14e–1—14e–3.

[2] Sections 13(d), 13(e), 14(d), 14(e) and 14(f) of the Securities Exchange Act of 1934 (the "Exchange Act"); 15 U.S.C. 78a et seq. (1982). Pub. L. No. 90–439, 82 Stat. 454 (1968). *See* S. Rep. No. 550, 90th Cong., 1st Sess. at 3 ("Senate Report"); H. R. Rep. No. 1711, 90th Cong., 2nd Sess. at 4 ("House Report").

[3] *Edgar* v. *MITE Corp.*, 457 U.S. 624 (1982).

[4] The Commission has considered codifying these requirements in previous rulemaking proposals. *See* Release No. 34–14234 (December 7, 1977) [42 FR 63066 December 14, 1977] and Release No. 34–16112 (August 16, 1979) [44 FR 49408 August 22, 1979] with respect to issuer tender offers regulated under section 13(e); and Release No. 34–16385 (November 29, 1979) [44 FR 70349 December 6, 1979] with respect to issuer and third-party tender offers under section 14(e) of the Exchange Act. This latter release proposed to codify the all-holders and best-price requirements simultaneously with the proposed definition of the term "tender offer" to clarify the distinction between the application of the definition and the regulatory requirements that must be observed once a tender offer is made. The Commission today is publishing a release that withdraws the 1979 proposed Rule 14e–4. *See* Release No. 34–22200 (July 1, 1985).

[5] In *Unocal Corporation* v. *T. Boone Pickens*, Civil Action No. CV 85–2179–AWT (C.D.C. April 29, 1985) defendants' motion to enjoin the Unocal issuer tender offer for violation of sections 13(e) and 14(e) of the Exchange Act because Unocal's issuer tender offer was extended to all of Unocal's security holders except the defendants and their good-faith transferees was denied by the District Court for the Central District of California.

[6] The Commission today also is publishing a release that proposes amending Rule 13e–4 under the Exchange Act, 17 CFR 240.13e–4, to make explicit that an issuer's tender offer also must be open to all holders of the class of securities subject to the tender offer and that all security holders must be paid the highest consideration offered to any security holder. *See* Release No. 34–22199 (July 1, 1985). The proposed codification of these requirements applicable to issuer tender offers under proposed Rule 13e–4(f) contains provisions virtually identical to those applicable to third-party offers.

[7] For this purpose, the discussion in this release concerning these requirements supersedes any views or positions expressed in earlier Commission releases or staff interpretations on the subject.

[8] 17 CFR 240.14e–1(b).

The Commission also has interpreted the Williams Act to require that the amount of consideration a bidder must pay a security holder in a tender offer conducted pursuant to Regulation 14D must be the highest consideration offered [9] to any security holder at any time during such tender offer.[10] This standard has not precluded the offer of alternative types of consideration. This interpretation furthers the purposes of the Williams Act, particularly section 14(d)(7).[11] The expressed legislative intent of the best-price provision is (i) to ensure fair treatment of persons who tender their shares at the beginning of a tender offer, and (ii) to ensure equality of treatment among all security holders who tender their shares.[12] Consistent with these objectives, the Commission interprets the Williams Act to require equal treatment of security holders by ensuring that they all be paid the highest consideration offered.[13]

Application of the best-price rule raises certain interpretive issues. The best-price rule extends to all tendering holders of the class of securities subject to the offer.[14] The consideration to be paid must be equal to the highest amount offered at any time during the tender offer period. Consistent with the Williams Act, the Commission's position has been that the highest consideration offered is determined from the earlier of the date the offer is first published or sent or given to security holders as defined by Rule 14d–2(a) or the date of public announcement as specified in Rule 14d–2(b).[15]

Changes in the consideration offered during the tender offer also raise interpretive issues. The resolution of these issues depends upon whether the value of the consideration is increased or decreased. In the event of a decrease in the consideration offered, security holders are confronted with a new investment decision requiring the commencement of a new offer with the recalculation of all time periods and a new determination of the "highest consideration." [16] All securities tendered into the original offer must be returned to security holders. On the other hand, increases in consideration are specifically addressed in Regulation 14E. Under Rule 14e–1(b), an increase in the consideration requires that the offer remain open for at least ten business days.

III. Synopsis of Proposals

A. Proposed Rule 14d–10

Proposed Rule 14d–10 would make explicit the Commission's position that the Williams Act requires equal treatment of all security holders in a tender offer. The proposal would prohibit third-party tender offers subject to section 14(d) conducted in violation of its provisions. By codifying the all-holders and best-price requirements in paragraph (a) and providing the Commission exemptive authority in paragraph (b), the proposed rule would ensure equal treatment of all holders of a class of securities for which a tender offer is made while facilitating transactions consistent with investor protection.

1. *Offer to All Holders.* The all-holders rule is necessary for the protection of investors and to achieve the purpose of the Williams Act. Proposed Rule 14d–10(a)(1) would provide that third-party tender offers must be open to all security holders of the class of securities subject to the offer.[17] The all-holders requirement does not prohibit tender offers for fewer than all outstanding securities of a class. But in a section 14(d) tender offer all security holders must be able to accept the tender offer if they choose.

The all-holders rule does not affect dissemination of tender offers. While a tender offer subject to section 14(d) of the Williams Act must be held open to all security holders of the subject class of securities, including foreign persons, the proposal would not affect dissemination of Section 14(d) tender offers. Rule 14d–4 [18] deems long-form publication, summary publication and the use of shareholder lists and security position listings to be published or sent or given to security holders within the meaning of section 14(d)(1). Under Rule 14d–4(b) adequate publication may require publication in a newspaper of national circulation. The Commission has not interpreted this provision as requiring dissemination of tender offer materials outside the United States. Similarly, proposed Rule 14d–10 is not intended to affect a foreign bidder making a tender offer solely in foreign jurisdictions [19] and not employing the jurisdictional means enumerated in Section 14(d)(1).

2. *Best-Price Rule.* Paragraph (a)(2) of the proposal would require that the consideration paid to any security holder pursuant to the tender offer be the highest consideration offered to any security holder at any time during such tender offer. If more than one type of consideration is offered pursuant to the tender offer, the types of consideration must be substantially equivalent in value.[20] The date for making the initial

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[9] *See* Release No. 34–16385 in which the Commission requested specific comment on whether the objective of proposed Rule 14e-4(a) should be expressed in terms of the highest consideration standard or one of substantial equivalence.

[10] *See* Rule 14d–2(b)(2)(ii), 17 CFR 240.14–d(2)(b)(2)(ii), which provides that section 14(d)(7) of the Exchange Act shall be deemed to apply to such tender offer from the date of the public announcement.

[11] 15 U.S.C. 78n(d)(7). Section 14(d)(7) provides that where a bidder increases the consideration offered for tendered securities during a tender offer, it also must pay the increased price to security holders who tender their shares prior to announcement of the increase. This right of a shareholder to receive the best price offered in a tender offer exists regardless of whether securities tendered prior to the increase of consideration offered actually were purchased before or after the announcement of such increase. *See* Memorandum of the SEC to the Committee on Banking and Currency, U.S. Senate on S. 2731, 89th Cong., 1st Sess., 111 Cong. Rec. 28256 (1965), 112 Cong. Rec. 19003, 19005 (1966), explaining that one of the purposes of the provision which became section 14(d)(7), was to avoid the discriminatory effect of paying some holders more than others.

[12] *See* Senate Report at 3, 10; House Report at 11.

[13] For example, a bidder amended his tender offer because he was not permitted to make an offer that would have paid a higher consideration to the employees of the target company than to other shareholders. *See also*, Letter to William Gleeson, Esq. from the Division of Corporation Finance re Methode Electronics, Inc. (December 29, 1976).

[14] In the event a person makes a tender offer for both subject securities and securities convertible into the subject securities, the consideration under the offer is permitted to differ between the two classes. The highest consideration offered to any security holder of one class during the tender offer must be paid to any other security holder of the same class. In addition, all bidders in such situations should be mindful of the possible application of Rule 10b–13, 17CFR 240.10b–13.

[15] 15 U.S.C. 78n(d)(2), 17 CFR 240.14d–2(b). In a tender offer where securities and cash are offered the value of the securities may change during the pendency of the tender offer in comparison to the cash value being offered. The Commission believes that a determination by reference to the date of commencement is necessary to provide certainty to persons who make tender offers. If the value of the offered consideration were to be determined on another date, such as the date of termination of the tender offer, a bidder making a tender offer in which cash and securities were offered as alternative types of consideration would not be able to estimate, for disclosure purposes, with any degree of certainty the amount of securities to be registered or the amount of cash needed.

[16] An initial determination that must be made however is whether the terms of the original offer, permit the bidder to unilaterally terminate its offer. A decrease in the amount of shares sought also would require commencement of a new offer, recalculation of all time periods and a new determination of the "highest consideration."

[17] The term "security holder" is defined in Rule 14d–1(b)(3), 17 CFR 240.14d–1(b)(3), for the purposes of use in Sections 14(d) and (e) and Regulations 14D and E.

[18] 17 CFR 240.14d–4.

[19] Tender offers by foreign bidders may present issues of compliance with other provisions of the federal securities laws, such as, sections 13 (d) and 14(f) of the Exchange Act; and the Securities Act of 1933 for exchange tender offers involving foreign bidders making offers for target companies with U.S. security holders.

[20] This provision responds to the concerns of a number of commentators on the 1979 rule proposal

Continued

determination as to substantial equivalence in value is the earlier of the date of public announcement as specified in Rule 14d–2(b), or the date of commencement as defined in Rule 14d–2(a). [21] If the bidder increases the consideration offered, an additional determination as to substantial equivalence would be required as of the date the increased consideration is first offered to security holders. The consideration that a bidder ultimately must pay a tendering shareholder, however, must be the highest consideration offered of that type. By requiring that a bidder pay the highest consideration offered, this rule would have the effect of codifying the Commission's position that a bidder may not lower the offering price without commencing a new tender offer. Under the current tender offer rules, the staff takes the position that a decrease in the consideration offered to security holders constitutes a new tender requiring the return of tendered shares and the beginning of new time periods.

3. *Exemptive Authority.* Proposed paragraph (b) would permit the Commission to grant relief from the rule's requirements on a case-by-case basis. Consistent with the Commission's policy of granting limited exceptions to the interpretations discussed above, proposed Rule 14d–10(b) would provide that the Commission, upon written request or upon its own motion, may determine that the rule's provisions, either conditionally or unconditionally, need not apply to a particular transaction.

B. Proposed Amendment to Rule 14e–1(b)

The Commission also is proposing to amend Rule 14e–1(b) which currently provides that a tender offer must remain open for ten business days upon an increase in the offered consideration or the dealer's soliciting fee. The proposed revision would add, as a trigger for the ten business day period, and increase in the number of securities solicited pursuant to a tender offer. [22] This proposal is based on Recommendation 18 of the Commission's Advisory Committee on Tender Offers. [23] The Commission is proposing to retain the current ten business day period under the rule. The Commission believes that investors need that time to evaluate increases in the consideration or the amount of securities sought under the offer. Both types of increases were accorded the same treatment by the Advisory Committee's recommendation. The Commission, however, believes that the ten business day period is more appropriate than the five calendar day extension suggested by the recommendation, because (i) the Commission is retaining the twenty business day minimum offering period and (ii) a five calendar day period is too short, particularly for small investors who must reply on the mails in a tender offer. [24]

C. Relation To State Takeover Statutes

The Commission recognizes that the Supreme Court's decision in *MITE* [25] casts doubt on the ability of a state to regulate a nationwide tender offer. In *MITE*, the Court held that the Illinois Business Takeover Act was an impermissible burden upon interstate commerce in violation of the Commerce Clause. Post-*MITE* takeover statutes have not come under close judicial scrutiny. To the extent that such state statutes unlawfully burden interstate commerce or conflict with federal law, they are invalid. The Commission recognizes its long and beneficial partnership with the states in the regulation of securities transactions but believes that certain state takeover statutes currently in effect frustrate the operation and objectives of the Williams Act. [26] The Commission seeks specific comment on the impact the rule would have on otherwise valid state takeover statutes. If there would be an impact, the Commission seeks comment as to what if any action could be taken to ameliorate this effect consistent with the purposes of the Williams Act.

IV. Regulatory Flexibility Analysis

This initial regulatory flexibility analysis concerns proposed Rule 14d–10 and proposed Rule 14e–1(b) and has been prepared by the Securities and Exchange Commission ("Commission") in accordance with 5 U.S.C. 604.

Reasons for Proposal

The proposed amendment to Rule 14e–1 would implement a recommendation of the Commission's Advisory Committee on Tender Offers. The Commission also has recognized a need to provide clarity and certainty in the regulatory scheme applicable to tender offers with respect to equal treatment of security holders, and accordingly is proposing Rule 14d–10.

Objectives

The Commission proposes amending Rule 14e–1 to add, as trigger of the current rule's additional ten business day period, an increase in the amount of securities sought. Proposed Rule 14d–10 is intended to codify Commission interpretations under the Williams Act Amendments to the Exchange Act [27] that require that a tender offer be made to all holders of the class of security subject to the offer.

Statutory Authority

The Commission is proposing to amend Regulations 14D and 14E pursuant to sections 3(b), 14(d), 14(e) and 23(a) of the Exchange Act.

Small Entities Subject to the Rule

If proposed Rule 14e–1(b) were adopted, certain small entities, including those not subject to Regulation 14D, would become subject to its requirements. It therefore appears likely that a substantial number of small entities would be affected by the proposed Rule 14e–1(b). Those entities not subject to Regulation 14D could include issuers who have publicly trade securities that are not registered with the Commission, issuers who report to the Commission pursuant to 15(d) of the Exchange Act, issuers whose securities are not publicly trade, and state and local governments with debt securities

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who expressed concern over the difficulty of making a tender offer with alternative forms of consideration under a rule requiring payment to every security holder of the highest consideration offered pursuant to the tender offer. Under this provision, alternative types of consideration would be allowed as long as the various types of consideration are substantially equivalent, and all security holders have the same choice among the considerations offered. Although each alternative type of consideration offered generally must be offered to every security holder, the Commission will not object if a bidder offer cash or other qualified securities in a state where there are Blue Sky law problems with the securities offered to other security holders, provided that the consideration of the type paid is substantially equivalent in value to the highest consideration of the type offered to any security holder during the tender offer.

[21] A corresponding revision will be made in Rule 14d–2(b)(2)(ii) at such time as proposed Rule 14d–10 is adopted to replace the reference to section 14(d)(7) with a reference to Rule 14d–10.

[22] Deletion of the proviso in Rule 14e–1(b) is an amendment proposed in the release dealing with proposed changes to Rule 13e–4, issuer tender offers; *See* Release No. 34–22199.

[23] The Advisory Committee recommended that "[t]he minimum offering period and prorationing period should not terminate for five calendar days from the announcement of an increase in price or number of shares sought."

[24] *See* H.R. Rep. No. 142, 98th Cong., 2d Sess. 28–29 (1984).

[25] 457 U.S. 624, *supra* note 3.

[26] *See e.g.*, Release No. 34–16384 (November 29, 1979) [44 FR 70326, 70329–70330 December 6, 1979]; and *Canadian Pacific Enterprises (U.S.) Inc.* v. *Krouse*, 506 F. Supp. 1192, 1202 (S.D. Ohio 1981).

[27] Sections 13(d), 14(d), 14(e) and 14(f) of the Exchange Act, 15 U.S.C. 78m(d), 78n(d), 78n(f). Pub. L. No. 90–439, 82 Stat. 454 (1968), as amended.

outstanding. An unknown portion of these classes of issuers are small entities. At this time the Commission is unable to determine the costs to small entities of compliance with the proposal. With respect to proposed Rule 14d–10, there should be no significant economic impact on small entities, since the proposal: (1) Represents a proposed codification of existing Commission interpretations which currently govern the conduct of tender offers subject to section 14(d) of the Exchange Act; and (ii) no entities not already subject to the Commission's interpretations would be brought within the scope of the proposed rule.

Reporting, Recordkeeping and Other Compliance Requirements

The Commission does not believe the either proposed rule would result in any new reporting or recordkeeping requirements. The proposed amendment to Rule 14e–1(b), however, would require that, in a tender offer involving a small entity, an increase in the number of securities sought would require that the offering period remain open for an additional ten business days.

Overlapping or Conflicting Federal Rules

The Commission does not believe that the proposed rules duplicate or conflict with any existing rule provisions.

Significant Alternatives

The Commission is considering the following significant alternatives to the proposed Rule 14e–1(b) amendments: (i) Exempting from the rule affected small entities, or (ii) limiting the rule's applicability to those tender offers that meet certain standards, such as tender offers for the securities of issuers subject to section 15(d) of the Exchange Act or tender offers made to residents of more than one state. The Commission does not consider the use of performance rather than design standards to be a significant alternative because a performance standard would be inconsistent with the Commission's statutory mandate of investor protection.

V. Request for Comments

Any interested person wishing to submit written comments on the proposals, as well as on other matters that might have an impact on the proposals, are requested to do so.

The Commission also requests comment on whether the proposed rule, if adopted, would have an adverse effect on competition or would impose a burden on competition that is neither necessary nor appropriate in furthering the purposes of the Exchange Act. Comments on this inquiry will be considered by the Commission in complying with its responsibilities under section 23(a)(2) of the Exchange Act.[25]

The Commission also encourages the submission of written comments with respect to any aspect of the initial regulatory flexibility analysis. Such written comments will be considered in the preparation of the final regulatory flexibility analysis, if the proposed rules are adopted.

Persons wishing to submit written comments should file three copies thereof with John Wheeler, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Comment letters should refer to File No. S7–34–85. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW. Washington, D.C. 20549.

VI. Statutory Basis and Text of Proposed Amendments

The Commission hereby proposes to amend Regulations 14D and 14E pursuant to sections 3(b), 14(d), 14(e) and 23(a) of the Exchange Act and section 23(c)(3) of the Investment Company Act.

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities, Tender offers, Issuers.

Statutory Basis and Text of Proposal

(Secs. 3(b), 14(d), 14(e), 23(a), 48 Stat. 882, 889, 894, 895, 901; sec. 203(a), 49 Stat. 704; sec. 8, 49 Stat. 1379; secs. 2, 3, 82 Stat. 454, 455; secs. 1, 2, 3–5, 84 Stat. 1497; secs. 3, 18, 89 Stat. 97, 155; sec. 202, 91 Stat. 1494; sec. 23(c)(3), 54 Stat. 825; 15 U.S.C. 78c(b), 78n(d), 78n(e), 78w(a), 80a–23(c)(3))

In accordance with the foregoing, Title 17, Chapter II, of the Code of Federal Regulations is proposed to be amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 continues to read in part as follows:

Authority: Sec. 23, 48 Stat. 901, as amended; 15 U.S.C. 78w, * * *§§ 240.12b–1 to 240.12b–36 also issued under secs. 3, 12, 13, 15, 48 Stat. 892, as amended, 894, 895, as amended; 15 U.S.C. 78c, 78*l*, 78m, 78o. §§ 240.14c–1 to 240c–101 also issued under secs. 15, 17, 48 Stat. 895, 897, sec. 203, 49 Stat. 1076, sec. 6, 78 Stat. 570; 15 U.S.C. 78o, 78q, 12 U.S.C. 241 nt., * * *.

2. By adding a new § 240.14d–10 to read as follows:

§ 240.14d–10 Equal treatment of security holders.

(a) No bidder shall make a tender offer unless:

(1) The tender offer is open to all security holders of the class of securities subject to the tender offer; *however*, this section shall not affect: (i) Dissemination under Rule 14d–4 or (ii) tender offers in which the bidder is not a United States resident or citizen and the tender offer does not employ any jurisdictional means enumerated in section 14(d)(1) of the Act, and

(2) In addition to the provisions of section 14(d)(7) of the Act, the consideration paid to any security holder pursuant to the tender offer is the highest consideration offered to any other security holder at any time during such tender offer, determined from the earlier of the date of public announcement as specified in Rule 14d–2(b) or the date of commencement pursuant to Rule 14d–2(a); *provided, however*, in a tender offer in which more than one type of consideration is offered: (i) The types of consideration are substantially equivalent in value on the earlier of the date of public announcement as specified in Rule 14d–2(b) or the date of commencement pursuant to Rule 14d–2(a); (ii) in the event of an increase by the bidder in the consideration offered during the tender offer, the types of consideration are substantially equivalent in value on the date such increase is first offered to security holders; and (iii) the highest consideration of each type offered to any security holder is paid to any other security holder accepting that type of consideration.

(b) This section shall not apply to any tender offer with respect to which the Commission, upon written request or upon its own motion, either unconditionally or on specified terms and conditions, determines that compliance with paragraph (a) is not necessary or appropriate in the public interest or for the protection of investors.

3. By revising paragraph (b) of § 240.14e–1 to read as follows:

§ 240.14e–1 Unlawful tender offer practices.

* * * * *

(b) Increase the amount of securities being sought or the consideration offered or the dealer's soliciting fee to be given in a tender offer unless such tender offer remains open for at least ten business days from the date that

[25] 15 U.S.C. 78w(a)(2).

notice of such increase is first published or sent or given to security holders;

* * * * *

By the Commission.

John Wheeler,

Secretary.

July 1, 1985.

[FR Doc. 85-16243 Filed 7-8-85; 8:45 am]

BILLING CODE 8010-01-M

17 CFR Part 240

[Release Nos. 33-6597; 34-22200; IC-14613]

Withdrawal of Rule Proposal Concerning Tender Offers

AGENCY: Securities and Exchange Commission.

ACTION: Withdrawal of proposal.

SUMMARY: The Securities and Exchange Commission is withdrawing a proposed rule pertaining to tender offers which would have codified the Commission's position that, with limited exceptions, a tender offer must be open to all holders of the security subject to the tender offer and the consideration paid under the tender offer to any security holder must equal the highest consideration offered to any other security holder.

DATE: This withdrawal is effective July 1, 1985.

FOR FURTHER INFORMATION CONTACT: Thomas E. Sweeney, Jr., (202) 272-2589, Office of Disclosure Policy, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: On November 29, 1979, the Commission published for comment certain proposed rules pertaining to tender offers, including proposed Rule 14e-4.[1] Proposed Rule 14e-4 under the Williams Act amendments to the Securities Exchange Act of 1934 ("Exchange Act"),[2] would have made explicit the Commission's position that: (i) Any tender offer must be open to all security holders who are United States residents if the offer is open to any such security holder; and (ii) the consideration paid to any security holder under the offer must be equal to the highest consideration offered to any other security holder at any time during the offer. As proposed in 1979, Rule 14e-4 specifically would have exempted certain issuer odd-lot tender offers and issuer tender offers not made to officers, directors or affiliates of such issuer. The Commission has determined to withdraw proposed Rule 14e-4 and today is publishing for comment proposed Rule 14d-10 and amendments to Rule 13e-4.[3]

By the Commission.

John Wheeler,

Secretary.

July 1, 1985.

[FR Doc. 85-16245 Filed 7-8-85; 8:45 am]

BILLING CODE 8010-01-M

[1] Release No. 34-16385 (November 29, 1979 [44 FR 70349, 70355].

[2] Sections 13(d), 13(e), 14(d), 14(e) and 14(f) of the Exchange Act, Pub. L. No. 90-439, 82 Stat. 454 (1968).

[3] *See* Release No. 34-22198 (July 1, 1985) proposing for comment Rule 14d-10, pertaining to third-party tender offers; and Release No. 34-22199 (July 1, 1985) proposing for comment amendments pertaining to issuer tender offers.

17 CFR Parts 250 and 259

[Release No. 35-23744; File No. S7-28-85]

Requirement That Applications and Declarations Filed Under the Public Utility Holding Company Act of 1935 Contain a Proposed Notice of the Proceeding Initiated Thereby

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule and form amendment.

SUMMARY: The Commission is publishing for public comment amendments to Rule 22 and Form U-1 under the Public Utility Holding Company Act of 1935 that would require that all applications and declarations filed with the Commission under that Act include, as an exhibit thereto, a proposed notice of the proceeding initiated by such filing. The proposed amendments are intended to expedite the processing of applications and declarations by the Commission's staff.

DATE: Comments must be received on or before August 2, 1985.

ADDRESSES: Send comments in triplicate to John Wheeler, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. (Reference to File No. S7-28-85). All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Kathleen A. Brandon (202-272-2676), Attorney, Office of Public Utility Regulation, or Glen A. Payne (202-272-3018), Assistant Director, Office of Investment Company Regulation, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: Rule 22 (17 CFR 250.22) specifies procedures to be followed by persons filing applications and declarations with the Commission under the Public Utility Holding Company Act of 1935 ("Act"). The Commission proposes to amend this rule by adding a new paragraph which will require applications and declarations filed under the Act to contain proposed notices, which may be used by the Commission in giving public notice of such filings.[1] In order to ensure the proposed notices will be subject to the verification requirements of Rule 22(c) (17 CFR 250.22(c)), where applicable, the Commission proposes to require them as a formal exhibit to the application or declaration. The Commission also proposes to amend General Instruction C of Form U-1 under the Act (17 CFR 259.101) to make filing of proposed notices specifically applicable to persons filing applications or declarations on that form.[2]

The proposed rule and form amendments are designed to expedite the processing of applications and declarations by the staff of the Division of Investment Management. The proposed amendments should reduce significantly the staff time currently spent preparing notices of filing of applications and declarations. The Commission is not proposing these amendments in order to make applicants or declarants furnish additional information not presently required. Patterned after the application or declaration they accompany, the proposed notice would identify the parties involved, *briefly* describe the relevant transactions and why the applicant or declarant believes that it qualifies for the requested Commission order, and summarize the critical representations and undertakings contained in the application or declaration. As stated in Investment Company Act Release No. 14492 (April 30, 1985), the Commission believes it is very important that proposed notices should be brief as well as informative.

[1] Rule 0-2(g) under the Investment Company Act of 1950 (17 CFR 270.02(g)) and Rule 0-4(g) under the Investment Advisers Act of 1940 (17 CFR 275.04(g)) currently require that applicants for Commission orders under those acts attach proposed notices as exhibits to the applications. This procedure has worked very well in facilitating the proceesing of such applications.

[2] It is important that the proposed notice requirement be specifically applicable to filings on Form U-1 since 95% of all applications and declarations requesting orders under the Act are made on that form.

List of Subjects in 17 CFR Part 250 and 259

Reporting and recordkeeping requirements, Public utility holding companies.

Text of Proposed Rule and Form Amendment

The Commission proposes to amend Parts 250 and 259 of Chapter II, Title 17 of the Code of Federal Regulations as set forth below:

PART 250—GENERAL RULES AND REGULATIONS, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

1. The authority citation for Part 250 continues to read in part as follows: Secs. 3, 20, 49 Stat. 810, 833; 15 U.S.C. 79c, 79t * * *.

2. By adding paragraph (f) to § 250.22 as follows:

§ 250.22 Applications and Declarations.

* * * * *

(f) *Proposed notice.* A proposed notice of the proceeding initiated by the filling of an application or a declaration shall accompany each application or declaration as an exhibit thereto and, if necessary, shall be modified to reflect any amendments to such application or declaration.

PART 259—FORMS PRESCRIBED UNDER THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

§ 259.101 [Amended]

3. By amending General Instruction C of Form U–1 described in § 259.101 to read as follows:

* * * * *

C. Attention is directed to the provisions of Rule 22 for certain additional procedural requirements, including the proposed notice requirement in Rule 22(f).

* * * * *

Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act [5 U.S.C. 605(b)], the Chairman of the Commission has certified that the proposed amendments to Rule 22 and Form U–1 will not, if adopted, have a significant economic impact on a substantial number of small entities. This certification, including the reasons therefore, is attached to this release.

Dated: June 27, 1985.

By the Commission.

John Wheeler,

Secretary.

Regulatory Flexibility Act Certification

I, John S. R. Shad, Chairman of the Securities and Exchange Commission, hereby certify, pursuant to 5 U.S.C. 605(b), that the proposed amendments to Rule 22(f) and amended Form U–1 under the Public Utility Holding Company Act of 1935 ("Act") will not have a significant economic impact on a substantial number of small entities. The reason for this certification is as follows: Amended Rule 22(f) would require that all applications and declarations filed with the Commission pursuant to the Act include as an exhibit a proposed notice of the proceeding which is being initiated by the filing. Amended Form U–1 would refer persons using that form to the proposed notice requirement of Rule 22(f), and thus make the filing of proposed notices specifically applicable to such filings. The proposed notice would be patterned after the application or declaration being submitted and would require no additional information. Thus, the amendments would not have a significant economic impact upon applicants. Moreover, the definition of a small business as found in Rule 110 under the Act excludes all holding companies currently registered with the Commission.

Dated: June 27, 1985.

John S.R. Shad,

Chairman.

[FR Doc. 85–16131 Filed 7–8–85; 8:45 am]

BILLING CODE 8010–01–M

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17 CFR Part 270

[Release No. IC–14607; File No. S7–30–85]

Acquisition and Valuation of Certain Portfolio Instruments by Registered Investment Companies

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule and rule amendments.

SUMMARY: The Commission is proposing amendments to an existing rule that provides exemptive relief for money market funds to use the amortized cost method of valuing their portfolio securities or the penny-rounding method of computing their price per share. The proposed amendments would permit funds relying on the rule to acquire put options for liquidity purposes and to treat variable rate or floating rate debt securities with periodic demand features as short-term debt securities under certain conditions. The proposed amendments would also reduce the responsibilities which the existing rule assigns to money market fund directors and would allow money market funds to rely a high quality rating only if the rating is assigned by a nationally recognized statistical rating organization that is unaffiliated with the issuer of or with any insurer, guarantor or provider of credit support for the rated securities.

The Commission is also proposing amendments to an existing rule that exempts certain investment company acquisitions of securities issued by persons engaged in securities related businesses. The rule would be amended to permit money market funds to acquire liquidity puts from persons engaged in securities related businesses under certain conditions. Finally, the Commission is proposing a new rule that would provide exemptive relief to allow registered investment companies to assign a fair value of zero to certain types of put options, known as standby commitments, under certain conditions.

DATE: Comments must be received on or before September 9, 1985.

ADDRESS: Send comments in triplicate to John Wheeler, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. (Reference to File No. (S7–30–85)). All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Jack W. Murphy, Staff Attorney or Elizabeth K. Norsworthy, Chief, (202) 272–2048, Office of Regulatory Policy, Division of Investment Management, Securities and Exchange Commssion, 450 Fifth Street, NW., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission today is asking for public comment on proposed amendments to rules 2a–7 [17 CFR 270.2a–7] and 12d3–1 [17 CFR 270.12d3–1] and on proposed rule 2a41–1 under the Investment Company Act of 1940 [15 U.S.C. 80a–1, *et seq.*] ("Act"). Rule 2a–7 permits, subject to specified conditions, certain open-end investment companies known as "money market funds" to use either (1) the amortized cost method of valuing their portfolio instruments [1] or (2) the penny-rounding

[1] A money market fund using the amortized cost method of valuation values its portfolio securities and other assets at acquisiton cost. The interest earned on each portfolio debt security (plus any discount received or less any premium paid upon purchase) is then accrued ratably over the remaining maturity of the security. By declaring these accruals to its shareholders as a daily dividend, the money market fund is able to set a fixed price per share, which is usually $1.00.

method of pricing their securities.[2] Rule 2a-7 requires money market funds using one of the above methods to limit their portfolio investments to instruments that are of high quality and that have a remaining maturity of one year or less. Funds relying on the rule must also maintain an average dollar-weighted portfolio maturity of no more then 120 days. Generally, the maturiy of an instrument is considered to be the maturity remaining on the face of the instrument.[3] However, the rule allows certain types of put options, known as "demand features," to be used to shorten the matrity of instruments that have variable or floating interest rates.[4]

The proposed amendments to rule 2a-7 would permit a money market fund relying on the rule to acquire put options for liquidity purposes only ("liquidity puts") under certain conditions. If adopted, the amendments would define "liquidity puts" to include demand features and "standby commitments," another type of put option that has been the subject of a number of prior exemptive orders. The proposed amendments would also permit funds relying on the rule to use periodic demand features to shorten the maturity of variable and floating rate instruments. In addition, the amendments would reduce the responsibilities related to the acquisition and disposition of demand feature instruments that the existing rule explicitly assigns to money market fund directors. The rule would also be amended to allow money market funds to rely on a high quality rating only if the rating is assigned by a nationally recognized statistical rating organization ("NRSRO") that is not affiliated with the issuer of, or with any insurer, guarantor or provider of credit support for the securities.[5]

The Commission is also proposing an amendment to rule 12d3-1 under the Act [17 CFR 270.12d3-1] to provide exemptive relief from section 12(d)(3) of the Act [15 U.S.C. 80a-12(d)(3)] to allow money market funds to acquire liquidity puts from persons engaged in securities related activities, under certain conditions. Finally, the Commission is proposing a rule under section 2(a)(41) of the Act [15 U.S.C. 80a-2(a)(41)] to allow registered investment companies to assign a fair value of zero to standby commitments under certain conditions.

Background

Rule 2a-7 codified prior exemptive orders permitting money market funds to use the amortized cost method of valuation or the penny-rounding method of pricing. At the time that the rule was adopted, the Commission discussed its application and scope in Investment Company Act Release No. 13380 (July 11, 1983) ("Release 13380"). [48 FR 32555]. In that release, the Commission stated that the rule did not address the acquisition or valuation of "puts or standby commitments" but suggested that these issues might be addressed in a future rule making process. The phrase "puts or stand-by commitments" was considered to encompass all agreements by a third party to purchase, at some future date and at a prescribed price, a security issued by another party.[6] For purposes of rule 2a-7, the Commission distinguished between puts running to a third party and demand features running to the issuer of the underlying security. This distinction was drawn due to the limited information regarding demand features that was available to the Commission staff and to the relatively undeveloped market in variable rate and floating rate instruments subject to those features that existed at the time rule 2a-7 was adopted.[7]

A. Market Changes

Since rule 2a-7 was adopted, a number of market changes have occurred that warrant a re-examination of the types of puts that may be used by money market funds to facilitate portfolio liquidity, including both third-party puts and issuer demand features, and the types of demand features that may be used to shorten the maturity of variable and floating rate instruments. The Commission also believes that market changes warrant amendment of rule 2a-7 to reflect industry practices regarding the role of money market fund directors in the making of decisions concerning demand feature instruments, and the circumstances under which a fund may rely on a high quality rating.

As noted above, rule 2a-7 prohibits money market funds relying on the rule from investing in most debt instruments which have a remaining maturity of more than one year or that will not be called for redemption within one year. However, the rule provides an exception for certain variable and floating rate instruments that are subject to demand features, a type of put option that runs to the issuer of the underlying instrument and allows the holder to obtain the principal amount of the instrument at any time upon no more than seven days' notice.[8] At the time that the rule was adopted, this exception provided a fair depiction of the types of variable and floating rate demand instruments that were available in the market and suitable for investment by funds relying on the rule.[9]

Over the past two years, however, new types of demand features have been developed, particularly with respect to variable or floating rate municipal securities. The Commission staff has been advised that these new demand features have been developed in order to avoid "reissuance" problems under the Internal Revenue Code of 1954 ("IRC"). Specifically, the Commission understands that when the holder of a municipal security exercises an issuer demand feature and the security is put back to the issuer or to a direct agent of the issuer, a subsequent remarketing of the security may constitute a reissuance of the security under the IRC.[10] When

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[2] A money market fund using the penny-rounding pricing method values portfolio securities for which market quotations are readily available at current market value, and other securities and assets at fair value as determined in good faith by the board of directors. The current net asset value per share is then rounded to the nearest one percent, allowing the fund to maintain a fixed price per share (usually $1.00). Penny-rounding funds also use the amortized cost valuation method to value portfolio securities having a remaining maturity of sixty days or less. *See* Investment Company Act Release No. 13380 (July 11, 1983), 48 FR 32555, at footnote 44, *citing* Investment Company Act Release No. 9786 (May 31, 1977), 42 FR 28999.

[3] Specifically, the rule provides that the maturity of an instrument shall be deemed to be the period remaining until the date noted on the face of the instrument as the date on which the principal amount owed must be paid, or in the case of an instrument called for redemption, the date on which the redemption payment must be made. *See* rule 2a-7(b)(3).

[4] Rule 2a-7 also allows a shorter maturity to be used in the case of variable interest rate instruments that are issued or guaranteed by the United States government or an agency thereof, or which are scheduled to be repaid in one year or less. *See* rule 2a-7(b)(5)(i) (A) and (C).

[5] The definition of "variable rate instrument" would also be changed to eliminate any confusion that may have arisen from the terminology used in the present definition, and references to the amortized cost and penny-rounding methods modified to describe these methods more precisely. Further, the parenthetical references in the rule to "trustees" would be eliminated since the definition of "director" in section 2(a)(12) of the Act [15 U.S.C. 80a-2(a)(12)] specifically includes a member of a board of trustees.

[6] *See* footnote 9 of Release 13380 and accompanying text.

[7] The rule's provision that permits a fund to treat variable and floating rate instruments with demand features as short-term debt securities under certain conditions went beyond a codification of exemptive orders previously issued. *See* footnote 16 of Release 13380 and accompanying text.

[8] *See supra* note 4, discussing other exceptions to the one year remaining maturity requirement of present rule 2a-7.

[9] *See* footnote 20 of Release 13380, *citing* letter from Gerald Osheroff, Associate Director, Division of Investment Management to Joel T. Matcovsky, Merrill Lynch Asset Management, Inc., dated December 10, 1981.

[10] Many municipal securities that are subject to demand features have variable interest rates. When

Continued

this occurs, a municipal issuer may be forced to requalify the security as tax-exempt prior to remarketing it. Moreover, under the amended tax code, the remarketed security may no longer qualify as tax-exempt.

The Commission understands that, in order to avoid the possibility of a reissuance, issuers of municipal securities have begun to structure demand features that do not run directly to the issuer or its agent, but run, in the first instance, to a separate entity that is provided with sufficient third-party credit support to honor the demands.[11] The securities that are put to the separate entity are then remarketed without ever having entered into the possession of the issuer or a direct agent of the issuer. By so structuring the demand feature, the issuer is able to make a more convincing argument that the remarketing of the securities is nothing more than a secondary market transaction and not a reissuance of the securities.

Another market development that has been brought to the Commission's attention is the growth of demand features that give the holder of the underlying debt instrument the right to recover the principal amount of the instrument at specified intervals (*i.e.*, quarterly, semi-annually, etc.) ("periodic demand features").[12] As noted above, the rule 2a–7 currently permits funds relying on the rule to treat as short-term debt securities floating rate or variable rate instruments with demand features that give the holder the right to recover the principal amount of the underlying securities upon no more than seven days' notice ("seven-day demand instruments"). The Commission understands that variable and floating rate instruments are now being marketed with periodic demand features because the cost of servicing these features is lower than the cost of servicing seven-day demand features. As is the case with seven-day demand instruments, it appears that the market values instruments with periodic demand features essentially as short-term debt securities having a maturity equal to the time remaining until a demand may be made or the interest rate adjusted.

The Commission also understands that, at least at the present time, it is primarily municipal securities that are being marketed as variable or floating rate instruments with these demand features. The limitations of the present rule are, therefore, felt most acutely by money market funds that limit their investments to municipal securities ("municipal funds"). As the number of municipal funds has increased, [13] and more variable or floating rate instruments are marketed with third party demand features or periodic demand features, the supply of demand feature instruments that satisfy the existing rule has contracted fairly dramatically.[14] Without a rule amendment, municipal funds will be excluded from a significant segment of the municipal securities market and may be forced to accept a lower yield on their investments.

The Commission's staff has been advised that at least 50% of the securities in municipal fund portfolios are variable or floating rate instruments.[15] Yet, under the existing rule, a fund's board of directors is assigned the responsibility of deciding whether the fund may acquire a variable or floating rate instrument with a demand feature and whether the fund may continue to hold that instrument.[16] Release 13380 permits the directors to delegate these responsibilities, and the Commission understands that this is invariably the case, given the degree to which funds are now investing in demand feature instruments. The Commission believes, therefore, that the rule should be amended to remove these director determinations and provide objective standards.

As noted above, rule 2a–7 conditions exemptive relief upon the quality of the debt instruments that are in a fund's portfolio. The rule states that each portfolio security must have a high quality rating from a major rating service or be determined to be of comparable quality by the board of directors. The Commission believes that the rule's references to "major rating service" should be changed to refer to "nationally recognized statistical rating organization" ("NRSRO"), the term that is used elsewhere in rules and regulations under the federal securities laws.[17] The Commission also believes that a fund should rely on a high quality rating only if the NRSRO is unaffiliated with the issuer of the securities and with any insurer, guarantor or provider of credit support for the securities.

B. Acquisition and Valuation of Standby Commitments

When rule 2a–7 was issued, the Commission's experience with puts on debt instruments that ran to third parties was largely limited to a type of put referred to as a "standby commitment." Beginning in 1981, the Commission began to receive and grant applications for exemptive relief from investment companies issuing redeemable securities, (*i.e.*, open-end management companies and unit investment trusts) to allow those companies to acquire standby commitments for municipal securities from brokers, dealers and other financial institutions in order to facilitate portfolio liquidity. The applicants also requested exemptive relief to allow such standby commitments to be assigned a fair value of zero.[18] All of the applicants have been

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the demand is exercised by a holder, the security will often be remarketed by a remarketing entity, which will adjust the interest rate to make the security more attractive to potential buyers. The remarketing entity is generally limited to choosing a new interest rate within a certain number of basis points above or below a stated index. In a tax context, the ability of the remarketing entity to set a new interest rate, coupled with a demand feature that requires the security to be put back to the issuer or to a direct agent of the issuer, could create the appearance that the remarketed security is a fundamentally different instrument from the original security. Under such circumstances, the remarketing of the security could be deemed a reissuance under the tax law. *See generally*, Winterer, *"Reissuance" and Deemed Exchanges Generally*, 37 Tax Lawyer 509 (1984).

[11] Avoiding the appearance of a reissuance has always been a factor in the structuring of municipal debt issues subject to demand features. However, the extensive changes in the tax code in recent years have made it increasingly difficult for a pre-existing municipal issue to requalify as tax-exempt. Therefore, municipal issuers have become even more wary of structuring demand features that would create the appearance that remarketed securities are reissued securities. *Id.*

[12] Tax considerations have also caused periodic demand features on municipal securities to be structured to run to a third party. *See supra* notes 10–11 and accompanying text.

[13] In 1982 there were 37 municipal money market funds. By the end of 1983, the number had increased to 66 funds. As of April 19, 1985, there were 92 municipal money market funds in existence, managing some $34 billion in assets.

[14] The supply of such instruments has been further reduced by the withdrawal from the tax-exempt note market of project notes issued by local housing authorities and marketed by the Department of Housing and Urban Development. ("HUD"). In 1983, total borrowings through project notes totalled $18.42 billion. However, the Deficit Reduction Act of 1984 cast doubt on the tax-exempt status of project notes. As a result, new issues of project notes were halted in August, 1984 and the total volume of such borrowings for 1984 totalled only $11.57 billion. This reduction was partially responsible for a reduction in total short-term tax exempt borrowings in 1984 to $30.54 billion, from the 1983 total of $35.85 billion.

[15] As noted *Supra* in footnote 13, as of April 19, 1985, the total assets of municipal money market funds equalled $34 billion. At least $17 billion of those assets are in demand feature instruments.

[16] *See* rule 2(a)(7)(b)(5) (i) and (ii).

[17] *See* discussion *infra* re rating services.

[18] Generally, the applicants have sought exemptive relief from sections 12(d)(3) and 2(a)(41) of the Act and from rules 2a–4 and 22c–1 under the Act.

municipal funds[19] and, with few exceptions, [20] all have been money-market funds that use the amoritized cost valuation method.

In their applications, the municipal funds have represented that they are continually faced with unique liquidity problems. As in the case of other investment companies issuing redeemable securities, municipal funds must maintain a level of portfolio liquidity that is sufficient to meet redemption requests. However, unlike other funds, municipal funds frequently purchase municipal securities pursuant to delayed delivery contracts.[21] When purchasing securities on a delayed delivery basis, a fund is required to maintain, in a segregated account, liquid assets equal to the purchase price due at settlement.[22]

The applicants have also represented that, because municipal securities usually have a limited range of maturity dates, municipal funds have greater difficulty than other types of funds in assembling a portfolio with securities that mature daily. Consequently, a municipal fund is ofter forced to sell a portion of its portfolio in order to meet redemptions, to retain investment flexibility and to maintain adequate coverage in its segregated accounts.

According to the applicants, the secondary market for certain types of municipal securities is more limited than that for other types of debt instruments. Where a fund holds in its portfolio fixed rate short-term municipal paper, the fund may often have problems selling the paper prior to maturity.[23] Applicants have represented that municipal securities dealers generally tender bids on a transactional basis, and do not continually make a market in the securities. Moreover, achieving same-day settlement on a secondary market sale may often entail a fund accepting a less favorable price for the municipal securities being sold.

As a result of the above liquidity problems, the applicants have maintained that when a fund purchases short-term fixed rate municipal securities from a broker, dealer or other financial institution, it is often in the fund's best interest to acquire at the same time a "standby commitment" allowing the fund to put the securities back to the seller at an agreed-upon price or yield prior to maturity. The exercise price of such commitments equals the amortized cost of the underlying securities at the time of exercise, plus accrued interest, if any. The applicants have represented that the standby commitments will not be used to affect the value of the underlying securities.

According to applicants, municipal funds usually pay nothing or only a nominal consideration for standby commitments.[24] The applicants have stated that the commitments will be exercised only as a last resort, because the broker, dealer or other financial institution would suffer a loss on the transaction if the exercise price is greater than the market value of the underlying securities at the time of exercise. According to applicants, if the broker or dealer suffers a loss on the transaction, the fund is unlikely to acquire any standby commitments from that broker or dealer in the future. Since it is difficult to evaluate whether a standby commitment will ever be exercised, or, if it is exercised, whether the fund will benefit from the transaction, applicants have requested exemptive relief to assign a fair value of zero to the commitments, with any consideration paid to be accounted for as unrealized depreciation.

So that municipal funds will no longer have to file applications for exemptive relief in order to acquire standby commitments, in addition to amending rule 2a–7, the Commission is also proposing an amendment to rule 12d3–1. The proposed amendment would allow a money market fund to acquire standby commitments and other liquidity puts for persons engaged in securities related activities, provided that the fund complies with the conditions of rule 2a–7. The Commission is also proposing rule 2a41–1 to give investment companies exemptive relief to assign a fair value of zero to standby commitments under certain conditions that are based on the prior exemptive orders.

Discussion

A. Amendments to rule 2a–7

1. *Liquidity puts.* As noted above, rule 2a–7 presently allows a money market fund to use either the amortized cost valuation method or the penny-rounding pricing method to maintain a fixed price per share, provided that the fund complies with certain conditions. These conditions include (1) limiting portfolio investments to high quality instruments having a remaining maturity, as determined in accordance with the rule, of one year or less; and (2) maintaining a dollar-weighted average portfolio maturity not exceeding 120 days. The quality and maturity requirements of the rule are designed to ensure that the fixed price per share accurately reflects the fund's actual net asset value per share.[25]

As discussed above, since the adoption of rule 2a–7, a number of changes have occurred in the types of short-term money market instruments available for purchase.[26] The proposed

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[19] Since 1981, at least 60 applications have been filed, and the requested relief granted. *See, e.g.*, Cash Accumulation Trust, Investment Company Act Release Nos. 14177 (October 1, 1984) [49 FR 39256] and 14218 (October 30, 1984); Financial Tax-Free Money Fund, Inc., Investment Company Act Release Nos. 13444 (August 18, 1983) [48 FR 38564] and 13503 (September 13, 1983); Tax-Exempt Money Market Fund, Investment Company Act Release Nos. 12508 (June 25, 1982) [47 FR 29041] and 12552 (July 22, 1982) and Municipal Fund for Temporary Investment, Investment Company Act Release Nos. 11822 (June 19, 1981) [46 FR 33151] and 11867 (July 21, 1981).

[20] *See e.g.*, Hutton Municipal Fund, Inc., Investment Company Act Release Nos. 13154 (April 12, 1983) [46 FR 17006] and 13229 (May 10, 1983), and Security Tax-Exempt Fund, Investment Company Act Release Nos. 13656 (December 6, 1983) [48 FR 55377] and 13896 (January 5, 1984).

[21] By the terms of this type of contract, the fund makes a firm commitment to purchase securities that will be delivered at a later date.

[22] *See* Investment Company Act Release No. 10666 (April 18, 1979) [44 FR 25128] in which the staff of the Division of Investment Management took the position that any firm commitment to purchase securities on a delayed delivery basis would be considered a senior security. Although section 18(f) [15 U.S.C. 80a–18(f)] of the Act does not permit an open-end investment company to issue senior securities, the staff stated that it would not recommend enforcement action if a company maintains liquid assets in a segregated account equal in value to the purchase price due on the settlement date.

[23] Many of the applications have involved standby commitments on project notes issued by local housing authorities and marketed through the Department of Housing and Urban Development. As discussed in footnote 13, *supra*, new issues of project notes were discontinued in August, 1984. However, the Commission has continued to receive applications since that date that refer to standby commitments on other types of municipal securities.

[24] Applicants have represented that the total amount of consideration paid for standby commitments will not exceed ½ of 1% of the value of their total assets, as calculated immediately after acquisition.

[25] Fluctuations in the market value of the portfolio of a money market fund utilizing amortized cost or penny-rounding could result in a net asset value per share that is either higher or lower than the fixed price per share. There are basically two types of risk which cause fluctations in the value of money market fund portfolio instruments: the market risk, which primarily results from fluctuations in the prevailing interest rate, and the credit risk. In general, instruments with shorter periods remaining until maturity have reduced market risks and thus tend to fluctuate less in value over time than instruments with longer periods remaining until maturity. Similarly, instruments which are of higher quality have lower credit risks and tend to fluctuate less in value over time than instruments which are of lower quality.

[26] While the market changes that have occurred have primarily involved the short-term municipal securities market, the proposed amendments to rule 2a–7 would be applicable to all money market funds.

amendments would address these market changes by amending the rule to allow money market funds to acquire put options for liquidity purposes ("liquidity puts") and to use periodic demand features to shorten the maturity of variable and floating rate instruments. The proposed amendments would also reduce the responsibilities which the existing rule assigns to money market fund directors and would allow money market funds to rely on a high quality rating only if the rating is assigned by a NRSRO that is unaffiliated with the issuer of or any insurer, guarantor or provider of credit support for the securities.[27]

The proposed amendments would define a "liquidity put" as a right to sell a specified underlying security or securities within a specified period of time at a certain exercise price. This definition would specifically include standby commitments that entitle the holder to achieve same day settlement and that have an exercise price equal to the amortized cost of the underlying security or securities plus accrued interest, if any, at the time of exercise. The definition would also include demand features that allow the holder to receive the principal amount of the underlying security or securities plus accrued interest, if any, at the time of exercise, either at any time upon no more than seven days' notice or at specified intervals not exceeding one year and upon no more than seven days' notice. To ensure that these options are acquired only to facilitate portfolio liquidity, the proposed definition would state that a liquidity put may be sold, assigned or otherwise transferred only in conjunction with a sale or transfer of the underlying security or securities.

The amended rule would limit the liquidity puts that a fund may acquire from any one institution. The value of the securities underlying all liquidity puts from the same institution would be limited to five percent of the total value of the fund's portfolio. In case of a fund using the amortized cost valuation method, the total value of the fund's assets would be calculated using the amortized cost of the fund's assets portfolio instruments; in the case of a fund using the penny-rounding pricing method, the total value would be calculated using the market or fair value of the fund's portfolio securities. If adopted, this limitation would prevent a money market fund from relying too heavily upon any one institution to maintain the fund's portfolio liquidity and would supercede the conditions of prior exemptive orders.

The amended rule would require that any liquidity put must satisfy the same high quality standard that is applied to other portfolio securities.[28] Therefore, a standby commitment or a demand feature would have to present minimal credit risks as determined by the board of directors and have received a rating of high quality or, if unrated, be of comparable quality as determined by the fund's board of directors or trustees.[29]

2. *Demand features.* The proposed amendments to rule 2a-7 would allow money market funds to uses periodic demand features, as well as seven-day demand features, to shorten the maturity of underlying securities that have variable or floating interest rates. The amendments would also remove the requirement that a demand feature must run to the issuer of the underlying security or securities.[30] By making these changes, the Commission intends to allow the issuers of variable and floating rate demand instruments[31] to market these securities to money market funds, while retaining maximum flexibility in structuring the put mechanism.

The proposed amendments would allow a fund to use a shorter maturity for a variable or floating rate demand instrument.[32] only if both the long-term and short-term credit aspects of the demand instrument are of high quality.[33] In determining the quality of a demand instrument, the fund may rely on a high quality rating assigned by an unaffiliated NRSRO[34] if the rating organization has considered both the long-term and short-term aspects of the instrument.[35] If only one aspect of the instrument has been rated, or where neither aspect has been rated, the board of directors may determine that any unrated aspect of the instrument is of a quality comparable that of similar instruments which have high quality short-term and long-term ratings.[36]

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[27] If the proposed amendments are adopted, the adopting release would serve as the operative interpretive vehicle for those parts of rule 2a-7 that are amended. Release 13380 would continue to serve as the operative interpretive vehicle for the provisions of rule 2a-7 which remain substantively unchanged.

[28] *See* rule 2a-7 (a)(iv) *and* (b)(iii) and discussion *infra*.

[29] In determining whether an unrated standby commitment, demand feature or other liquidity put is of comparable quality, the fund's board of directors should, of course, examine all relevant data. Examples of relevant data would include such factors as the creditworthiness of the party responsible for paying the exercise price when the put is exercised and the credit support (such as a letter of credit, insurance, or other backup arrangements), if any, provided to ensure timely payment on the put.

[30] The Division of Investment Management has interpreted that provision to mean that a demand feature may also run to an agent of the issuer. *See* letter from Gerald Osheroff, Associate Director, to the Honorable Lee Sherman Dreyfus, Governor of Wisconsin, dated October 22, 1982 (publicly available March 3, 1983).

[31] A variable rate instrument would be redefined as one whose terms provide for the adjustment of its interest rate on set dates and which, upon such adjustment, can reasonably be expected to have a market value that approximates its par value. This definition removes the requirement in the present rule that the adjustment of the interest rate be "automatic" (*see* rule 2a-7(b)(3)). The Commission staff has been informed that the "automatic" terminology of the present rule has caused some confusion in the industry. Many variable rate instruments are structured so that on the date when the interest rate is scheduled to be adjusted, the interest rate is usually changed by a remarketing agent to a new rate which reflects current market rates. Since the remarketing agent often has discretion to set the rate within a given number of basis points above or below an appropriate index of current interest rates uncertainty has arisen as to whether the interest rate adjustment is "automatic" within the meaning of the rule. The proposed amendments would eliminate any confusion resulting from the use of the term "automatic" in the present definition, in order to make it explicit that where the interest rate of an instrument is adjusted in a manner similar to that described above, the instrument would still be considered a variable rate instrument under this rule.

[32] The maturity of a variable rate demand instrument would, under the amendments, be determined in the same manner that is currently used to determine the maturity of such an instrument under the rule. Similarly, the maturity of a floating rate demand instrument would be determined in the same manner as currently used to determine the maturity of that type of instrument under the rule.

[33] The quality of a demand instrument depends both upon the ability of the issuer of the underlying security to meet scheduled payments of principal and interest and upon the availability of sufficient liquidity to allow a holder of the instrument to recover the principal amount upon exercise of the demand feature. Therefore, the demand instrument combines both long-term and short-term credit risk. In recognition of the dual nature of the credit risks pertaining to such instruments, at least two major rating agencies have begun to assign dual ratings to demand instruments.

[34] *See* discussion *infra* regarding rate agencies.

[35] If both the long-term and short-term credit aspects have been considered, the money market fund may rely on a single high quality rating assigned by a NRSRO.

[36] In determining whether an unrated unlerlying security of a demand feature is of comparable quality, it is anticipated that the board would examine the instrument in a manner similar to that used for securities that are not subject to a demand feature. However, if the demand feature runs to the issuer of the underlying security or if the issuer is ultimately responsible for honoring the demand feature, the board should also examine the effect, if any, that the existence of the demand feature would have on the issuer's long-term creditworthiness. Similarly, in examining the demand feature itself, the board should examine typical short-term credit factors including the existence of sufficient liquidity to enable the principal amount to be recovered in a timely fashion once the demand is made. Such liquidity, of course, may depend upon the short-time creditworthiness of the party responsible for honoring the demand or upon third party credit support agreements such as letters of credit or insurance, or upon a combination of these factors

There may be situations where a security has been rated by a NRSRO that did not consider the existence of an external agreement to provide credit support, such as a letter of credit from a bank or an insurance policy. Under those circumstances, the fund may consider the security to be an unrated security and the board, taking into account the external agreement, may determine that the security is of comparable quality.[37] Where the instrument has received different ratings from different rating organizations, the rule's requirements would be satisfied if a high quality rating for each aspect has been received from at least one NRSRO.[38]

In the event that either the long-term or the short-term rating of the demand instrument were to fall below high quality or comparable quality as determined by the fund's board of directors, the proposed amendments would require the fund to treat the underlying security as having the maturity indicated on the face of the instrument. If the remaining maturity were in excess of one year, the fund would have to dispose of the underlying security within a reasonable time and in a manner best suited to the fund's interests, whether by exercising the demand feature or by selling the instrument on the secondary market.[39]

Under the present rule, if a money market fund intends to use a demand feature to shorten the maturitry of a variable rate instrument, its board of directors must first determine that whenever a new interest rate is established, it is reasonable to expect that the instrument will have a current market value that approximates its par value.[40] A similar determination is required for a floating rate instrument.[41] Under the amended rule, the directors would no longer have to make these determinations. Instead, these standards would be incorporated into the definitions of variable rate and floating rate instruments.[42]

Under the present rule, the directors are also required to make a quarterly determination that the demand feature instrument is still of high quality.[43] The Commission believes that the directors do not need to be involved in routine quality determinations where the demand feature instrument has a dual high quality rating from an unaffiliated NRSRO. Under the amended rule, fund directors would no longer have the day-to-day responsibility of determining whether the fund should acquire and continue to hold a demand feature instrument, unless the short-term or long-term aspects of the instrument are unrated. In that case, as is the case with any unrated debt security under the rule, the directors would have to determine that the instrument is of comparable quality.

3. *Rating services.* As noted above, rule 2a–7 presently requires that a money market fund limit its portfolio investments to instruments that have received a high quality rating from any major rating service or which are of comparable quality as determined by the fund's board of directors. To conform rule 2a–7 to other rules and regulations under the federal securities laws,[44] the proposed amendments would replace references to a "major rating service" with references to a "nationally recognized statistical rating organization (NRSRO")," as that term is used in the Commission's net capital rule.[45] The amended rule would allow money market funds to rely on a high quality rating assigned by a NRSRO only if the rating organization is unaffiliated with the issuer of, and any insurer, guarantor or provider of credit support (e.g. letters of credit) for, the rated securities. Although the concept of independence is implicit in the term NRSRO, the Commission believes that, for the purposes of rule 2a–7, independence should be defined within the context of the Act. Accordingly, the amended rule would require that a NRSRO may not be an "affiliated person"; of the issuer of, or any insurer, guarantor or provider of credit support for, the rated securities. The term "affiliated person" is defined in section 2(a)(3) of the Act [15 U.S.C. 80a–2(a)(3)].

B. Proposed Amendment to Rule 12d3–1

Section 12(d)(3) of the Act [15 U.S.C. 80a–12(d)(3)] prohibits any registered investment company and any company or companies controlled by such registered investment company from purchasing or otherwise acquiring any security issued by or any other interest in the business of any person who is a broker, a dealer, an investment adviser to an investment company, an investment adviser registered under the Investment Advisers Act of 1940 [15 U.S.C. 80b–1 *et seq.*] or who is engaged in the business of underwriting (collectively "securities related businesses"). The Commission recently adopted revised rule 12d3–1 under section 12(d)(3) to enable registered investment companies to acquire securities issued by persons engaged in securities related businesses under certain conditions.[46] That revised rule provides a blanket exemption for investment company acquisitions of the securities of issuers that derive 15% or less of their gross revenues from securities related activities, and a conditional exemption for the acquisition of securities of issuers deriving more than 15% of their gross revenues from such activities.

As noted above, municipal funds must obtain exemptive relief from section 12(d)(3) to acquire standby commitments from persons engaged in securities related businesses. So that money market funds will no longer have to file applications for exemptive relief to acquire standby commitments or other types of liquidity puts, the Commission is proposing an amendment to rule 12d3–1 that would allow these acquisitions, provided that the acquiring company complies with rule 2a–7 as amended. This would permit a money market fund to acquire standby commitments and demand features from persons engaged in securities related activities, as long as the value of the securities underlying the puts from any one institution does not exceed 5% of the total value of the fund's portfolio and as long as the liquidity puts meet the quality conditions of rule 2a–7. The amended rule would supersede prior exemptive orders.

C. Proposed Rule 2a41–1

As discussed above, since it is difficult to evaluate whether a standby

[37] *See* Release 13380, footnotes 34–35.

[38] *Id.*

[39] *See* Release 13380, footnote 22. Of course, if the remaining maturity of the underlying security were less than one year, or if the redemption date were within one year, the fund could continue to hold the underlying security and assign a maturity equal to the remaining maturity or the period until the redemption date.

[40] *See* rule 2a–7(b)(5)(i)

[41] In the case of a floating rate instrument, the board must determine that it is reasonable to expect that the floating rate feature will ensure that the market value of the instrument will always approximate its par value. *See* rule 2a–7(b)(5)(ii)(A).

[42] Of course, the amended rule would not alter the responsibility of the board of directors to monitor the performance of the fund's investment adviser. This responsibility would continue to include the duty to review and monitor the appropriateness of the standards used by the adviser in making determinations concerning the purchase, retention and disposition of variable and floating rate demand instruments.

[43] *See* rule 2a–7 (b)(5)(i)(B) *and* (b)(5)(ii)(B).

[44] *See, e.g.*, rule 134 [17 CFR 230.134] under the Securities Act of 1933 [15 U.S.C. 77a *et seq.*], the general instructions to regulation S–K under that Act [17 CFR 229.10] and the eligibility requirements for use of form S–3 under that Act [17 CFR 239.13].

[45] *See* rule 15c3–1(c)(2)(vi)(F) [17 CFR 240.15c3–1(c)(2)(iv)(F)] under the Securities Exchange Act of 1934 [15 U.S.C. 78a *et seq.*]

[46] *See* Investment Company Act Release No. 14036 (July 13, 1984) [49 FR 29362] adopting the revised rule.

commitment will ever be exercised or, if it is exercised, whether the fund will benefit from the transaction, a number of municipal funds have requested and received exemptive relief to assign a fair value or zero to these instruments. Proposed rule 2a41–1 would allow an investment company's board of directors to make this fair value determination as long as the standby commitment is not used to affect the value of the underlying security or securities and as long as any consideration paid for the standby commitment is accounted for as unrealized depreciation. For example, a money market fund relying on the rule could not use the standby commitment to affect the market value of the underlying securities for purposes of monitoring any deviation between the fixed price per share and its current value per share. The rule, if adopted, would supersede prior exemptive order.[47]

Request for Comment

The Commission is requesting general comment on any other issues relating to rule 2a–7 or the acquisition and use of put options by registered investment companies that have not been addressed in this release.

List of Subjects in 17 CFR Part 270

Investment companies, Reporting and recordkeeping requirements, Securities.

Statutory Basis and Text of Proposed Rule Amendments

The proposed amendments to rules 2a–7 and 12d3–1 and proposed rule 2a41–1 would be adopted pursuant to the authority granted the Commission in sections 6(c) [15 U.S.C. 80–6(c)], 22(c) [15 U.S.C. 80a–22(c)] and 38(a) [15 U.S.C. 80a–37(a)] of the Act.

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

Part 270 of Chapter II of Title 17 of the Code of Federal Regulations is amended as shown.

1. The authority citation for Part 270 continues to read in part as follows:

Authority: Secs. 38, 40, 54 Stat. 841, 842, 15 U.S.C. 80a–37 80c–89 * * *

2. By revising paragraphs (a)(1), (a)(2)(i), (ii), and (iv), revising and redesignating (a)(2)(v) as (vi), redesignating (a)(2)(vi) as (vii), adding a new paragraph (a)(2)(v), revising (a)(3)(i) and (iii), adding (a)(3)(iv), revising paragraph (b) and adding paragraph (c) of § 270.2a–7 as follows:

§ 270.2a–7 Use of the amortized cost valuation and penny-rounding pricing methods by certain money market funds.

(a) * * *

(1) The board of directors of the money market fund determines, in good faith based upon a full consideration of all material factors, that it is in the best interest of the fund and its shareholders to maintain a fixed price per share, by using the amortized cost method of valuation or the penny-rounding method of pricing, and that the money market fund will continue to use such method or methods only so long as the board of directors believes that it fairly reflects the market based net asset value per share; and either

(2) * * *

(i) In supervising the money market fund's operations and delegating special responsibilities involving portfolio management to the money market funds's investment adviser, the money market fund's board of directors undertakes—as a particular responsibility within the overall duty of care owed to its shareholders—to establish procedures reasonably designed, taking into account current market conditions and the money market fund's investment objectives, to assure to the extent reasonably practicable that the fund's price per share, as computed for the purpose of distribution, redemption and repurchase, fairly reflects the market based net asset value per share.

(ii) Included within the procedures to be adopted by the board of directors shall be the following:

(A) Procedures adopted whereby the extent of deviation, if any, of the current net asset value per share calculated using available market quotations (or an appropriate substitute which reflects current market conditions) from the money market fund's amortized cost price per share, will be determined at such intervals as the board of directors deems appropriate and are reasonable in light of current market conditions; periodic review by the board of directors of the amount of the deviation as well as the methods used to calculate the deviation; and maintenance of records of the determination of deviation and the board's review thereof.

(B) In the event such deviation from the money market fund's amortized cost price per share exceeds ½ of 1 percent, a requirement that the board of directors will promptly consider what action, if any, should be initiated by the board of directors, and

(C) Where the board of directors believes the extent of any deviation from the money market fund's amortized cost price per share may result in material dilution or other unfair results to investors or existing shareholders, it shall take such action as it deems appropriate to eliminate or reduce to the extent reasonably practicable such dilution or unfair results.

* * * * *

(iv) The money market fund will limit its portfolio investments, including liquidity puts and repurchase agreements, to those United States dollar-denominated instruments which the board of directors determines present minimal credit risks and which are of "high quality" as determined by any unaffiliated nationally recognized statistical rating organization or, in the case of any instrument that is not rated, of comparable quality as determined by the board directors;

(v) Immediately after the acquisition of any liquidity put, the money market fund will not have invested more than 5 percent of the total amortized cost value of its assets in securities underlying liquidity puts from the same institution;

(vi) The money market fund will record, maintain, and preserve permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) described in paragraph (a)(2)(i) of this section and the money market fund will record, maintain, and preserve for a period of not less than six years (the first two years in an easily accessible place) a written record of the board of directors' considerations and actions taken in connection with the discharge of its responsibilities, as set forth above, to be included in the minutes of the board of directors' meetings. The documents preserved pursuant to this condition shall be subject to inspection by the Commission in accordance with section 31(b) of the Act [15 U.S.C. 80a–30(b)] as if such documents were records required to be maintained pursuant to rules adopted under section 31(a) of the Act [15 U.S.C. 80a–30(a)];

* * * * *

(3) * * *

(i) In supervising the money market fund's operations and delegating special responsibilities involving portfolio management to the money market fund's investment adviser, the money market fund's board of directors undertakes—as a particular responsibility within the overall duty of care owed to its shareholders—to assure to the extent

[47] If the proposed rule is adopted, the Commission proposes to give notice to all funds with standby commitment exemptive orders of its intention to amend those orders to bring them into conformity with the rule.

reasonably practicable, taking into account current market conditions affecting the money market fund's investment objectives, that the money market fund's price per share as computed for the purpose of distribution, redemption and repurchase, fairly reflects the market-based net asset value per share.

* * * * *

(iii) The money market fund will limit its portfolio investments, including liquidity puts and repurchase agreements, to those United States dollar-denominated instruments which the board of directors determines present minimal credit risks and which are of "high quality" as determined by any unaffiliated nationally recognized statistical rating organization, or, in the case of an instrument that is not rated, of comparable quality as determined by the board of directors.

(iv) Immediately after the acquisition of any liquidity put, the money market fund will not have invested more than 5 percent of the total market-based value of its assets in securities underlying liquidity puts from the same institution.

(b) For the purposes of this rule, the maturity of a portfolio instrument shall be deemed to be the period remaining until the date noted on the face of the instrument as the date on which the principal amount owed must be paid, or in the case of an instrument called for redemption, the date on which the redemption payment must be made, except that:

(1) An instrument that is issued or guaranteed by the United States government or any agency thereof which has a variable rate of interest readjusted no less frequently than annually may be deemed to have a maturity equal to the period remaining until the next readjustment of the interest rate.

(2) A variable rate instrument, the principal amount of which is scheduled on the face of the instrument to be paid in one year or less, may be deemed to have a maturity equal to the period remaining until the next readjustment of the interest rate.

(3) A variable rate instrument that is subject to a demand feature may be deemed to have a maturity equal to the longer of the period remaining until the next readjustment of the interest rate or the period remaining until the principal amount can be recovered through demand, as long as such demand instrument continues to receive a short-term and a long-term high quality rating from an unaffiliated nationally recognized statistical rating organization or, if not rated, is determined to be of comparable quality by the board of directors.

(4) A floating rate instrument that is subject to a demand feature may be deemed to have a maturity equal to the period remaining until such principal amount can be recovered through demand, as long as such demand instrument continues to receive a short-term and a long-term high quality rating from an unaffiliated nationally recognized statistical rating organization or, if not rated, is determined to be of comparable quality by the board of directors.

(5) A repurchase agreement may be deemed to have a maturity equal to the period remaining until the date on which the repurchase of the underlying securities is scheduled to occur, or where no date is specified, but the agreement is subject to demand, the notice period applicable to a demand for the repurchase of the securities.

(6) A portfolio lending agreement may be treated as having a maturity equal to the period remaining until the date on which the loaned securities are scheduled to be returned, or where no date is specified, but the agreement is subject to demand, the notice period applicable to a demand for the return of the loaned securities.

(c) *Definitions.* (1) The "amortized cost method of valuation" is the method of calculating an investment company's net asset value whereby portfolio securities are valued by reference to the fund's acquisition cost as adjusted for amortization of premium or accumulation of discount rather than by reference to their value based on current market factors.

(2) The "penny-rounding method pricing" is the method of computing an investment company's price per share for purposes of distribution, redemption and repurchase whereby the current net asset value per share is rounded to the nearest one percent.

(3) A "liquidity put" is a right to sell a specified underlying security or securities within a specified period of time and at a specified exercise price, that may be sold, transferred or assigned only with the underlying security or securities, and includes:

(i) A standby commitment that entitles the holder to achieve same day settlement and to receive an exercise price equal to the amortized cost of the underlying security or securities plus accrued interest, if any, at the time of exercise; and

(ii) A demand feature that entitles the holder to receive the principal amount of the underlying security or securities plus accrued interest, if any, at the time of exercise, and which may be exercised either (A) at any time, upon no more than seven days' notice; or (B) at specified intervals not exceeding one year and upon no more than seven days's notice.

(4) A variable rate instrument is one whose terms provide for the adjustment of its interest rate on set dates and which, upon such adjustment, can reasonably be expected to have a market value that approximates its par value.

(5) A floating rate instrument is one whose terms provide for the adjustment of its interest rate whenever a specified interest rate changes and which, at any time, can reasonably be expected to have a market value that approximates its par value.

(6) The term unaffiliated nationally recognized statistical rating organization shall mean any nationally recognized statistical rating organization, as that term is used in rule 15c3-1(c)(2)(vi)(F) under the Securities Exchange Act of 1934 [17 CFR 240.15c3-1(c)(2)(vi)(F)], that is not an affiliated person of the issuer of, or any insurer, guarantor or provider of credit support for, the instrument which the money market fund is considering acquiring.

(7) "One year" shall mean 365 days except, in the case of an instrument that was originally issued as a one year instrument, but had up to 375 days until maturity, one year shall mean 375 days.

3. By adding § 270.2a41-1 to read as follows:

§ 270.2a41-1 Valuation of standby commitments by registered investment companies.

A standby commitment as described in rule 2a-7(c)(3)(i) under the Act [17 CFR 270.2a-7(c)(3)(i)] may be assigned a fair value of zero, *Provided,* That:

(a) The standby commitment is not used to affect the company's valuation of the security or securities underlying the standby commitment; and

(b) Any consideration paid by the company for the standby commitment, whether paid in cash or by paying a premium for the underlying security or securities, is accounted for by the company as unrealized depreciation.

4. By amending § 270.12d3-1 by adding new paragraph (d)(8)(v) to read as follows:

§ 270.12d3-1 Exemption of acquisitions of securities issued by persons engaged in securities related businesses.

* * * * *

(d) * * *

(8) * * *

(v) Acquistion of liquidity puts, as defined in rule 2a-7 under the act (17

CFR 270.2a–7] in compliance with the provisions of that rule.

* * * * *

Regulatory Flexibility Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act (15 U.S.C. 605(b), the Chairman of the Commission has certified that the proposed amendments to rules 2a–7 and 12d3–1 and proposed rule 2a4–1 will not, if adopted, have a significant impact on a substantial number of small entities. This certification, including the reasons therefor, is attached to this release.

Dated: July 1, 1985.

By the Commission.

John Wheeler,

Secretary.

Regulatory Flexibility Certification

I, John S.R. Shad, Chairman of the Securities and Exchange Commission, hereby certify pursuant to 5 U.S.C. 605(b) that the proposed amendments to rules 2a–7 (17 CFR 270.2a–7) and 12d3–1 (17 CFR 270.12d3–1), and proposed rule 2a41–1 under the Investment Company Act of 1940 ("Act") (15 U.S.C. 80a–1, et. seq.), set forth in Investment Company Act Release No. 14607, if promulgated, will not have a significant economic impact on a substantial number of small entities. The reason for this certification is that the proposed amendments to rule 2a–7 would simply allow certain open-end investment companies, known as "money market funds" to acquire put options for the purpose of enhancing the liquidity of their portfolio securities, and would define the circumstances under which such put options could affect the maturity of those securities. While the primary effect of these amendments would be to expand the class of securities in which municipal money market funds could invest, it does not appear that the economic impact of the amendments upon small entities would be significant. The proposed amendments would also redefine the role of the board of directors required by rule 2a–7, thereby clarifying the extent to which such determinations may be delegated to the management of such companies, and incorporating present industry practices into the text of the rule. This change would not appear to have any significant economic impact. The proposed amendments to rule 2a–7 would also allow money market funds to acquire portfolio securities in reliance on a high quality rating only if the rating is assigned by a nationally recognized statistical rating organization that is unaffiliated with the issuer of, or any insurer, guarantor or provider of credit support for the rated securities. It does not appear that any funds that are small entities are purchasing securities in reliance upon ratings that would not qualify under the proposed amendments. Proposed rule 2a41–1 and the proposed amendment to rule 12d3–1 would codify certain prior exemptive orders allowing investment companies to acquire a type of put option known as standby commitments and to assign a fair value of zero to such commitments. While the proposed rule and rule amendments would make it unnecessary for municipal funds to file applications for exemptive relief, it does not appear that a substantial number of small entities would be seeking such relief, since most of the funds seeking to acquire standby commitments and value them at zero have already applied for and received exemptive relief.

Dated: July 1, 1985.

John S.R. Shad,

Chairman.

[FR Doc. 85–16246 Filed 7–8–85; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD8–85–12]

Drawbridge Operation Regulation; Bayou Sara, AL

AGENCY: U.S. Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of the Seaboard System Railroad, the Coast Guard is considering a change in the regulation governing the operation of the swing span railroad bridge over Bayou Sara, mile 0.1, near Saraland, Mobile County, Alabama, by requiring that at least eight hours advance notice be given for an opening of the draw from 6 p.m. to 10 .m. The bridge would open on signal outside these hours. Presently, the draw is required to open on signal from 6 a.m. to 10 p.m. and on four hours advance notice from 10 p.m. to 6 a.m., except that, during periods of severe storms or hurricanes the draw is required to open on signal. This proposal is being made because of infrequent requests to open the draw during the proposed advance notice period. This action should relieve the bridge owner of the burden of having a person available at the bridge between 6 p.m. and 10 a.m., and should still provide the reasonable needs of navigation.

DATE: Comments must be received on or before August 23, 1985.

ADDRESS: Comments should be mailed to Commander (obr), Eighth Coast Guard District, 500 Camp Street, New Orleans, Louisiana 70130. The comments and other materials referenced in this notice will be available for inspection and copying in Room 1115 at this address. Normal office hours are between 8:00 a.m. and 3:30 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Perry Haynes, Chief, Bridge Administration Branch, at the address given above, telephone (504) 589–2965.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting views, comments, data or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Commander, Eighth Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. This proposed regulation may be changed in the light of comments received.

Drafting Information

The drafters of this notice are Perry Haynes, project officer, and Steve Crawford, project attorney.

Discussion of Proposed Regulation

Vertical clearance of the bridge in the closed position is 3.0 feet above high water and 5.0 feet above low water. There are, on average, twelve (12) trains crossing the bridge daily. Navigation through the bridge consists of tugs with tows and pleasure boats. Data submitted by Seaboard System Railroad for the 12-month period from January 1984 through December 1984 show that this traffic through the bridge is as follows:

(1) During the proposed advance notice period of 6 p.m. to 10 a.m., there were 53 bridge openings—an average of 4.4 openings per month or an average of one opening every seven days.

(2) During the remaining hours between 10 a.m. and 6 p.m. when the draw would continue to open on signal, there were 134 bridge openings—an average of 11.2 openings per month or

an average of two openings every five days.

The advance notice for an opening of the draw would be given to the railroad Chief Dispatcher's office in Mobile, Alabama, by placing a collect call at any time, telephone (205) 432–0725. To provide for leeway in the appointed arrival time, Seaboard System Railroad would have a tender at the bridge at least one-half hour before the appointed time who would remain at least one-half hour after that time for a late arriving vessel.

Economic Assessment and Certification

This proposed regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation Regulatory policies and procedures (44 FR 11034, February 26, 1979).

The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. The basis for this conclusion is that the average number of vessels passing this bridge during the proposed advance notice period, 6 p.m. to 10 a.m., is one vessel every seven days. These vessels can reasonably give advance notice for a bridge opening by placing a collect call to the railroad Chief Dispatcher at any time. The mariners requiring the bridge openings are repeat users of the waterway and scheduling their arrival at the bridge at the appointed time during the proposed advance period should involve little or no additional expense to them. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulation

In consideration of the foregoing, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; and 49 CFR 1.46(c)(5) and 33 CFR 1.05–1(g).

2. Section 117.105 is revised to read as follows:

§ 117.105 Bsyou Sara.

The draw of the Seaboard System Railroad bridge, mile 0.1 near Saraland, shall open on signal; except that, from 6 p.m. to 10 a.m., the draw shall open on signal if at least eight hours notice is given. During periods of severe storms or hurricanes, from the time the National Weather Service sounds an "alert" for the area until the "all clear" is sounded, the draw shall open on signal.

Dated: June 26, 1985.

W.H. Stewart,

Rear Admiral, U.S. Coast Guard Commander, Eighth Coast Guard District.

[FR Doc. 85–16253 Filed 7–8–85; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 117

[CGD7–85–28]

Drawbridge Operation Regulations; Gulf Intracoastal Waterway, FL

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of Manatee County, the Coast Guard is considering a change to the regulations governing the Cortez and Anna Maria drawbridges which would extend the periods during which openings may be limited. This proposal is being made because traffic has increased. This action should accommodate the needs of vehicular traffic yet still provide for the reasonable needs of navigation.

DATE: Comments must be received on or before August 23, 1985.

ADDRESSES: Comments should be mailed to Commander (oan), Seventh Coast Guard District, 51 S.W. 1st Avenue, Miami, Florida 33130. The comments and other materials referenced in this notice will be available for inspection and copying at 51 S.W. 1st Avenue, Room 816, Miami, Florida 33130. Normal office hours are between 7:30 a.m. and 4 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Mr. Walt Paskowsky, Bridge Administration Specialist, (305) 350–4103.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Commander, Seventh Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulations may be changed in light of comments received.

Drafting Information

The drafters of this notice are Mr. Walt Paskowsky, project officer, and Lieutenant Commander Ken Gray, project attorney.

Discussion of Proposed Regulations

Both bridges are presently required to open on signal except from 10 a.m. to 5 p.m., Saturdays, Sundays, and holidays when they need open only a quarter-hour intervals. The proposed regulations would lengthen this weekend regulated period by two hours (9 a.m. to 6 p.m.) and, for the Cortez bridge only, apply identical regulations on weekdays December through May. These changes are proposed because data provided by Manatee County shows significant vehicular traffic delays during these periods.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and non-significant under the Department of Transportation regulatory policies and procedures (44FR 11034; February 26, 1979).

The economic impact of this proposal is expected to be so minimal that a full regualtory evaluation is unnecessary. We conclude this because the proposal will exempt tugs with tows. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations, to read as follows:

1. The authority citation for Part 119 continues to read as follows:

Authority: 33 U.S.C. 499 CFR 1.46 and 33 CFR 1.05–1(g).

2. It is proposed to revise § 117.287 by revising paragraph (d) and adding a new paragraph (d–1) to read as follows:

PART117—DRAWBRIDGE OPERATION REGULATIONS

§ 117.287 Gulf Intracoastal Waterway, Caloosahatchee River to Perdido River.

* * * * *

(d) The draw of the Cortez (SR 684) bridge, mile 87.4, shall open on signal; except that, from 9 a.m. to 6 p.m. on Saturdays, Sundays, and federal holidays the draw need open only on the hour, quarter-hour, half-hour, and three-quarter hour. From December 1 to May 31, Monday through Friday except federal holidays, from 9 a.m. to 6 p.m., the draw need open only on the hour, quarter-hour, half-hour, and three-quarter hour.

(d-1) The draw of the Anna Maria (SR 64) bridge, mile 89.2, shall open on signal except that from 9 a.m. to 6 p.m. on Saturdays, Sundays, and federal holidays the draw need open only on the hour, quarter-hour, half-hour and three-quarter hour.

* * * * *

Dated: June 25, 1985.

R.P. Cueroni,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 85-16254 Filed 7-8-85; 8:45 am]

BILLING CODE 4910-14-M

POSTAL SERVICE

39 CFR Part 111

Examination of Postage Meters Not Set During 6 Month Period

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: The purpose of this document is to propose changes to the postage meter regulations. These changes propose new follow-up notification procedures for postmasters to take when customers do not submit their postage meters for required six month examinations.

DATE: Comments must be received on or before August 8, 1985.

FOR FURTHER INFORMATION CONTACT: F.E. Gardner, (202) 245-5756.

SUPPLEMENTARY INFORMATION: Present regulations require review of Form 3610, Record of Postage Meter Settings, quarterly. If no settings have been made during the previous six months, meter licensees are advised to bring the meters in for examination.

This change would establish that the first such advisory must be in writing, with a subsequent follow-up in 15 days. The minimum time from when the first written notice is sent until a meter license may be revoked under these procedures would be 40 days. See DMM 144.232. In actual practice, it would average closer to three months after the end of the six month period in which the meter had not been reset.

The present system is not working because the method of original notification is not specified and there are no follow-up procedures. This results in meters not being examined for periods of over a year, which adversely affects protection of postal revenue because of the possible improper use of meters.

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553 (b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites comments on the following proposed revision of the Domestic Mail Manual, incorporated by reference in the Code of Federal Regulations. See 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

PART 144—POSTAGE METERS AND METER STAMPS

1. The authority citation for 39 CFR Part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 CFR Parts 401, 404, 407, 408, 3001-3011, 3201-3219, 3403-3405, 3601, 3621; 42 U.S.C. 1973cc-13, 1973cc-14.

2. Revise 144.62 to read as follows:

144.62 Examination.

a. Review Forms 3610 quarterly. If no settings have been made during the previous six months, advise the local meter licensees in writing to bring in meters which have not been set in this period for examination, as specified in 144.341. When the meter is set at another office, request the office which sets the meter to have it called in for examination. The office where the meter is set will then advise the office where Form 3610 is maintained of the results of the examination, including register readings at the time of examination, so a suitable entry can be made on Form 3610.

b. Customers who do not bring in their meters after the initial written notification must be approached again within 15 days, preferably by personal contact. If no response is received within another 15 days, the postmaster must notify the meter license holder that the license is to be revoked, following the procedures for revocation in 144.23. A Form 1603, Meter and Verification Card, or similar form must not be used as a method of verification and examination.

An appropriate amendment to 39 CFR 111.3 to reflect these changes will be published if the proposal is adopted.

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 85-16274 Filed 7-8-85; 8:45 am]

BILLING CODE 7710-12-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Public Hearing and Reopening of Comment Period on Proposed Endangered Status and Critical Habitat for the Least Bell's Vireo

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of public hearing and reopening of comment period.

SUMMARY: The U.S. Fish and Wildlife Service gives notice that three public hearings will be held on the proposed determination of endangered status and critical habitat for the least Bell's vireo (*Vireo bellii pusillus*) and that the comment period on the proposal is reopened. This bird is found in southwestern California and northwestern Baja California. The hearings and the reopening of the comment period will allow comments on this proposal to be submitted from all interested parties.

DATES: The hearings are scheduled as follows:

1. July 30, 1985, 7:00-9:00 p.m., San Diego, California
2. July 31, 1985, 7:00-9:00 p.m., Oxnard, California
3. August 1, 1985, 7:00-9:00 p.m., Anaheim, California

The comment period, which originally closed on July 2, 1985, now closes August 30, 1985.

ADDRESSES: The hearings will be held at the following locations:

1. July 30, 1985—Plaza International Hotel, 1515 Hotel Circle South, San Diego, CA 92108
2. July 31, 1985—Oxnard Hilton Inn, 600 Esplanda Drive, Oxnard, CA 93030
3. August 1, 1985—Inn at the Park, 1855 South Harbor, Anaheim, CA 92802

Written comments and materials should be sent to the Regional Director, U.S. Fish and Wildlife Service, Lloyd 500 Building, 500 N.E. Multnomah Street,

Suite 1692, Portland, Oregon 97232. Comments and materials received will be available for public inspection during normal business hours, by appointment, at the Regional Endangered Species Division at the above Regional Office address.

FOR FURTHER INFORMATION CONTACT: For information on the public hearing contact Gail Kobetich, Project Leader, U.S. Fish and Wildlife Service, Sacramento Endangered Species Office, 2800 Cottage Way, Room E–1823, Sacramento, California 95825 (916/978–4866 or FTS 460–4866).

SUPPLEMENTARY INFORMATION:

Background

The least Bell's vireo is a small, gray, migratory songbird dependent upon thickets along willow-dominated riparian habitats for nesting. The bird is endangered by habitat alteration and nest parasitism by the brownheaded cowbird. A proposal of endangered status with critical habitat for the least Bell's vireo was published in the **Federal Register** (50 FR 18968) on May 3, 1985.

Section 4(b)(5)(E) of the Endangered Species Act of 1973, as amended, requires that a public hearing be held, if requested within 45 days of the publication of a proposed rule. On June 7, 1985, a request for a public hearing on this proposal was received from Mr. Joel D. Kuperberg, Attorney at Law, Costa Mesa, California, representing the Orange County Water District. The Service has scheduled the hearings for: (1) July 30, 1985—Plaza International Hotel, 1515 Hotel Circle South, San Diego, California from 7:00 to 9:00 p.m.; (2) July 31, 1985—Oxnard Hilton Inn, 600 Esplanada Drive, Oxnard, California from 7:00–9:00 p.m.; and (3) August 1, 1985—Inn at the Park, 1855 South Harbor, Anaheim, California from 7:00–9:00 p.m.. Those parties wishing to make statements for the record should have available a copy of their statements to be presented to the Service at the start of the hearing. Oral statements may be limited to 5 or 10 minutes, if the number of parties present that evening necessitates some limitation. There are no limits to the length of written comments presented at this hearing or mailed to the Service.

The comment period on the proposal originally closed on July 2, 1985. In order to accommodate the hearing, the Service also reopens the public comment period. Written comments may now be submitted until August 30, 1985, to the Service office in the Addresses section.

Author

The primary author of this notice is Wayne S. White, Chief, Division of Endangered Species, 500 N.E. Multnomah Street, Suite 1692, Portland, Oregon 97232 (503/231–6131 or FTS 429–6131).

Authority: The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*; Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Dated: July 2, 1985.

Richard Myshak,

Regional Director.

[FR Doc. 85–16228 Filed 7–8–85; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 50, No. 131
Tuesday, July 9, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Child Care Food Program; National Average Payment Rates, Day Care Home Food Service Payment Rates and Administrative Reimbursement Rates for Sponsors of Day Care Homes for the Period July 1, 1985 through June 30, 1986

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces the annual adjustments to the national average payment rates for meals served in centers, the food service payment rates for meals served in day care homes, and the administrative reimbursement rates for sponsors of day care homes to reflect changes in the Consumer Price Index. Further adjustments are made to these rates to reflect the higher costs of providing meals in the States of Alaska and Hawaii. The adjustments contained in this notice are required by the statutes and regulations governing the Child Care Food Program (CCFP).

EFFECTIVE DATE: July 1, 1985.

FOR FURTHER INFORMATION CONTACT: Lou Pastura, Branch Chief, Policy and Program Development Branch, Child Nutrition Divisions, Food and Nutrition Service, USDA, Alexandria, Virginia 22302, (703) 756-3620.

SUPPLEMENTARY INFORMATION:

Classification

This notice has been reviewed under Executive Order 12291, and has been classified as not major because it does not meet any of the three criteria identified under the executive Order. The action announced in the notice will not have an annual effect on the economy of $100 million, will not cause a major increase in costs or prices, and will not have a significant economic impact on competition, employment, investment, productivity, innovation, or on the ability of U.S. enterprises to compete with Foreign-based enterprises in domestic or foreign markets.

This notice has also been reviewed for compliance with the requirements of Pub. L. 96-354, the Regulatory Flexibility Act. Robert E. Leard, Administrator of the Food and Nutrition Service, has certified that this action will not have a significant economic impact on a substantial number of small entities. This notice merely complies with a Congressional mandate to adjust reimbursement rates in the CCFP to allow for changes in the Consumer Price Index, thereby maintaining constancy in the Program.

This notice is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V (48 FR 29112, June 24, 1983)).

This notice imposes no new reporting or recordkeeping provisions that are subject to Office of Management and Budget review in accordance with the *Paperwork Reduction Act of 1980* (44 U.S.C. 3587).

Definitions

The terms used in this notice shall have the meanings ascribed to them in the regulations governing the CCFP (7 CFR Part 226).

Background

Pursuant to sections 11 and 17 of the National School Lunch Act, section 4 of the Child Nutrition Act and § 226.4, § 226.12 and § 226.13 of the regulations governing the CCFP (7 CFR Part 226), notice is hereby given of the new payment rates of participating institutions. These rates shall be in effect during the period July 1, 1985-June 30, 1986.

As provided for under the National School Lunch Act and the Child Nutrition Act, all rates in the CCFP must be prescribed annually on July 1 to reflect changes in the Consumer Price Index (CPI) for the most recent 12-month period. In accordance with this mandate, the Department last adjusted the national average payment rates for centers, the food service payment rates for day care homes and the administrative remibursement rates for sponsors of day care homes on July 1, 1984.

All States Except Alaska and Hawaii

Meals Served in Centers—Per Meal Payment Rates in Cents:	
Breakfasts:	
Paid	9.75
Free	68.00
Reduced	38.00
Lunches and Suppers:	
Paid	12.50[1]
Free	117.75 + paid = 130.25[1]
Reduced	130.25 − 40.00 = 90.25[1]
Supplements:	
Paid	3.25
Free	35.75
Reduced	18.00
Meals Served in Day Care Homes—Per Meal Payment Rates in Cents:	
Breakfasts	57.00
Lunches and Suppers.	111.75
Supplements	33.25
Administrative Reimbursement Rates for Sponsoring Organizations of Day Care Homes— Per Home/Per Month Rates in Dollars:	
Initial 50 day care homes.	50
Next 150 day care homes.	38
Next 800 day care homes.	30
Additional day care homes.	26

[1]These rates do not include the value of commodities (or cash-in-lieu of commodities) which institutions receive as additional assistance for each lunch or supper served to children under the program. Notices announcing the value of commodities and cash-in-lieu of commodities are published separately in the **Federal Register**.

Pursuant to section 12(f) of the NSLA, the Department adjusts the payment rates for participating institutions in the States of Alaska and Hawaii. The new payment rates for Alaska are as follows:

Alaska

Alaska—Meals Served in Centers—Per Meal Payment Rates in Cents:	
Breakfasts:	
Paid	16.00
Free	110.25
Reduced	80.25
Lunches and Suppers:	
Paid	20.25[1]
Free	190.75 + paid = 211.00[1]
Reduced	211.00 − 40.00 = 171.00[1]
Supplements:	
Paid	5.25
Free	58.00
Reduced	29.00

Alaska—Continued

Alaska—Meals Served in Day Care Homes—Per Meal Payment Rates in Cents:	
Breakfasts	92.25
Lunches and Suppers.	181.00
Supplements	54.00
Alaska—Administrative Reimbursement Rates for Sponsoring Organizations of Day Care Homes—Per Home/Per Month Rates in Dollars:	
Initial 50 day care homes.	81
Next 150 day care homes.	62
Next 800 day care homes.	48
Additional day care homes.	43

[1]These rates do not include the value of commodities (or cash-in-lieu of commodities) which institutions receive as additional assistance for each lunch or supper served to children under the program. Notices announcing the value of commodities and cash-in-lieu of commodities are published separately in the **Federal Register**.

The new payment rates for Hawaii are as follows:

Hawaii

Hawaii—Meals Served in Centers—Per Meal Payment Rates in Cents:	
Breakfasts:	
Paid	11.50
Free	79.50
Reduced	49.50
Lunches and Suppers:	
Paid	14.75[1]
Free	137.75+paid=152.50[1]
Reduced	152.50−40.00=112.50[1]
Supplements:	
Paid	3.75
Free	41.75
Reduced	21.00
Hawaii—Meals Served in Day Care Homes—Per Meal Payment Rates in Cents:	
Breakfasts	66.50
Lunches and Suppers.	130.75
Supplements	39.00
Hawaii—Administrative Reimbursement Rates for Sponsoring Organizations of Day Care Homes—Per Home/Per Month Rates in Dollars:	
Initial 50 day care homes.	59
Next 150 day care homes.	45
Next 800 day care homes.	35
Additional day care homes.	31

[1]These rates do not include the value of commodities (or cash-in-lieu of commodities) which institutions receive as additional assistance for each lunch or supper served to children under the program. Notices announcing the value of commodities and cash-in-lieu of commodities are published separately in the **Federal Register**.

The changes in the national average payment rates and the food service payment rates for day care homes reflect a 3.8 percent increase during the 12-month period May 1984 to May 1985 (from 332.6 in May 1984 to 345.1 in May 1985) in the food away from home series of the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor. The changes in the administrative reimbursement rates for sponsoring organizations of day care homes reflect a 3.7 percent increase during the 12-month period May 1984 to May 1985 (from 309.7 in May 1984 to 321.3 in May 1985) in the series for all items of the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor.

The total amount of payments available to each State agency for distribution to institutions participating in the program is based on the rates contained in this notice.

AUTHORITY: Secs. 4, 8, 11 and 17 of the National School Lunch Act, as amended, (42 U.S.C. 1753, 1757, 1759(a), 1766) and sec. 4 of the Child Nutrition Act, as amended, (42 U.S.C. 1773).

(Catalog of Federal Domestic Assistance Program No. 10.558)

Dated: July 3, 1985.

Robert E. Leard,

Administrator, Food and Nutrition Service.

[FR Doc. 85-16224 Filed 7-8-85; 8:45 am]

BILLING CODE 3410-30-M

National School Lunch, Special Milk, and School Breakfast Programs;National Average Payments/Maximum Reimbursement Rates

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This Notice announces the annual adjustments to the "national average payments," the amount of money the Federal Government provides States for lunches and breakfasts served to children participating in the National School Lunch and School Breakfast Programs. The Department also announces adjustments in the "maximum reimbursement rates," the maximum per lunch rate from Federal funds that a State can provide a school food authority for lunches served to children participating in the school lunch program. Further, this Notice announces the rate of reimbursement for a half-pint of milk served to nonneedy children in a school or institution which participates in *only* the Special Milk Program for Children. The payments and rates are prescribed on an annual basis each July. The annual payments and rates adjustments for the school lunch and school breakfast programs reflect changes in the food away from home series of the Consumer Price Index for All Urban Consumers. The annual rate adjustment for milk reflects changes in the Producer Price Index for Fresh Processed Milk. These payments and rates are in effect from July 1, 1985 to June 30, 1986.

EFFECTIVE DATE: July 1, 1985.

FOR FURTHER INFORMATION CONTACT: Lou Pastura, Chief, Policy and Program Development Branch, Child Nutrition Division, FNS, USDA, Alexandria, Virginia 22302, (703) 756-3620.

SUPPLEMENTAL INFORMATION:

Classification

This Notice has been reviewed under Executive Order 12291 and has not been classified as major because it does not meet any of the three criteria identified under the Executive Order. The action announced in this Notice will not have an annual effect on the economy of $100 million, will not cause a major increase in costs or prices and will not have a significant impact on competition, employment, investment, productivity, innovation or on the ability of United States enterprises to compete with foreign-based enterprises in domestic or export markets.

This notice is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See 7 CFR Part 3015, Subpart V (48 FR 29112, June 24, 1983).

This Notice has also been reviewed with regard to the requirements of Pub. L. 96-354, the Regulatory Flexibility Act. The Administrator of the Food and Nutrition Service has certified that this action will not have a significant adverse economic impact on a substantial number of small entities.

This notice imposes no new reporting or recordkeeping provisions that are subject to OMB review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3587).

Definitions

The terms used in this notice shall have the meanings ascribed to them in the regulations governing the National School Lunch Program (7 CFR Part 210), the regulations for the Special Milk Program (7 CFR Part 215), the regulations for School Breakfast Program (7 CFR Part 220) and the regulations for Determining Eligibility for Free and Reduced Price Meals and Free Milk in Schools (7 CFR Part 245).

Background

Special Milk Program for Children.—Pursuant to section 3 of the Child

Nutrition Act, as amended (42 U.S.C. 1772), the Department announces the rate of reimbursement for a half-pint of milk served to nonneedy children in a school or institution which participates in *only* the Special Milk Program for Children. This rate is adjusted annually to reflect changes in the Producer Price Index for Fresh Processed Milk.

For the period July 1, 1985 to June 30, 1986, the rate of reimbursement for a half-pint of milk served to a nonneedy child in a school or institution which participates in *only* the Special Milk Program is 9.5 cents. This reflectes an increase of 2.26 percent in the Producer Price Index for Fresh Processed Milk during the period May 1984 to May 1985.

As a reminder, schools or institutions with pricing programs which elect to serve milk to eligible children continue to receive the average cost of a half-pint of milk (the total cost of all milk purchased during the claim period divided by the total number of purchased half-pints) for each half-pint served to an eligible child.

National School Lunch and School Breakfast Programs.—Pursuant to section 11 of the National School Lunch Act, as amended (42 U.S.C. 1759a), and section 4 of the Child Nutrition Act of 1966, as amended (42 U.S.C. 1773), the Department annually announces the adjustments to the National Average Payment Factors, and to the maximum Federal reimbursement rates for lunches served to children participating in the National School Lunch Program. Adjustments are prescribed each July 1, based on changes in the food away from home series of the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor.

Lunch Payment Factors.—Section 4 of the National School Lunch Act provides general cash for food assistance payments to States to assist shcools in purchasing food. There are two section 4 National Average Payment Factors (NAPFs) for lunches served under the National School Lunch Program. The lower payment factor applies to lunches served in school food authorities in which less than 60 percent of the lunches served in the school lunch program during the second preceding school year were served free or at a reduced price. The higher payment factor applies to lunches served in school food authorities in which 60 percen or more of the lunches served during the second preceding school year were served free or at a reduced price.

To supplement these section 4 payments, section 11 of the National School Lunch Act provides special cash assistance payments to aid schools in providing free and reduced price lunches. The section 11 NAPF for each reduced price lunch served is set at *40* cents less than the factor for each free lunch.

As authorized under sections 8 and 11 of the National School Lunch Act, maximum reimbursement rates for each type of lunch are prescribed by the Department in this Notice. These maximum rates ensure equitable disbursement of Federal funds to school food authorities.

Breakfast Payment Factors.—Section 4 of the Child Nutrition Act of 1966, as amended, establishes National Average Payment Factors for free, reduced price and paid breakfasts served under the School Breakfast Program and additional payments for schools determined to be in "severe need" because they serve a high percentage of needy children.

Revised Payments

The following specific section 4 and section 11 National Average Payment Factors and maximum payments are in effect through June 30, 1986. Due to a higher cost of living, the average payments and maximum reimbursements for Alaska and Hawaii are higher than those for all other States. The Virgin Islands, Puerto Rico and the Pacific Territories use the figures specified for the contiguous States.

National School Lunch Program Payments

Section 4 National Average Payment Factors.—In school food authorities which served *less than 60 percent* free and reduced price lunches in School Year 1983–84, the payments are: *Contiguous States*—12.50 cents, maximum rate 20.50 cents; *Alaska*—20.25 cents, maximum rate 32 cents; *Hawaii*—14.75 cents, maximum rate 23.75 cents.

In school food authorities which served *60 percent or more* free and reduced price lunches in School Year 1983–84, payments are: *Contiguous States*—14.50 cents; maximum rates 20.50 cents; *Alaska*—22.25 cents, maximum rate 32 cents; *Hawaii*—16.75 cents, maximum rate 23.75 cents.

Section 11 National Average Payment Factors—Contiguous States—free lunch 117.75 cents, reduced price lunch 77.75 cents; *Alaska*—free lunch 190.75 cents, reduced price lunch 150.75 cents; *Hawaii*—free lunch 137.75 cents, reduced price lunch 97.75 cents.

School Breakfast Program Payments

For schools "not in severe need" the payments are: *Contiguous States*-free breakfast 68 cents, reduced price breakfast 38 cents, paid breakfast 9.75 cents; *Alaska*—free breakfast 110.25 cents, reduced price breakfast 80.25 cents, paid breakfast 16 cents; *Hawaii*—free breakfast 79.50 cents, reduced price breakfast 49.50 cents, paid breakfast 11.50 cents.

For schools in "severe need" the payments are: *Contiguous States*—free breakfast 81.75 cents, reduced price breakfast 51.75 cents, paid breakfast 9.75 cents; *Alaska*—free breakfast 132.50 cents, reduced price breakfast 102.50 cents, paid breakfast 16 cents; *Hawaii*—free breakfast 95.75 cents, reduced price breakfast 65.75 cents, paid breakfast 11.50 cents.

Payment Chart

The following chart illustrates: the lunch National Average Payment Factors with the Sections 4 and 11 already combined to indicate the per meal amount; the maximum lunch reimbursement rates; the breakfast National Average Payment Factors including "severe need" schools; and the milk reimbursement rate.

All amounts are expressed in dollars or fractions thereof. The payment factors and reimbursement rates used for the Virgin Islands, Puerto Rico and the Pacific Territories are those specified for the contiguous States.

SCHOOL PROGRAMS—MEAL AND MILK PAYMENTS TO STATES AND SCHOOL FOOD AUTHORITIES

[Expressed in dollars or fractions thereof]

[Effective from July 1, 1985–June 30, 1986]

National school lunch program [1]		Less than 60 percent	60 percent or more	Maximum rate
Contiguous states	Paid	.1250	.1450	.2050
	Reduced price	.9025	.9225	1.0725
	Free	1.3025	1.3225	1.4725
Alaska	Paid	.2025	.2225	.32
	Reduced price	1.71	1.73	1.9725
	Free	2.11	2.13	2.3725
Hawaii	Paid	.1475	.1675	.2375
	Reduced price	1.1250	1.1450	1.32
	Free	1.5250	1.5450	1.72

[1] Payments listed for Free and Reduced Price Lunches include both Section 4 and 11 funds.

School Breakfast program		Non-severe need	Severe need
Contiguous states	Paid	.0975	.0975
	Reduced price	.38	.5175
	Free	.68	.8175
Alaska	Paid	.16	.16
	Reduced price	.8025	1.0250
	Free	1.1025	1.3250
Hawaii	Paid	.1150	.1150
	Reduced price	.4950	.6575
	Free	.7950	.9575

Special milk program	All milk	Paid milk	Free milk
Pricing programs without free option	$0.095	(1)	(1)
Pricing programs with free option	(1)	$0.095	(2)
Nonpricing programs	.095	(1)	(1)

[1] NA.
[2] Average cost ½ pint milk.

(Catalog of Federal Domestic Assistance Nos. 10.553, and 10.555 and 10.556)

Authority: Sections 4, 8, and 11 of the National School Lunch Act, as amended, (42 U.S.C. 1753, 1757, 1759(a)) and sections 3 and 4(b) of the Child Nutrition Act, as amended. (42 U.S.C. 1772 and 42 U.S.C. 1773).

Dated: July 3, 1985.

Robert E. Leard,

Administrator, Food and Nutrition Service.

[FR Doc. 85-16225 Filed 7-8-85; 8:45 am]

BILLING CODE 3410-30-M

Forest Service

Mono Basin National Forest Scenic Area Advisory Board; Meeting

The Mono Basin National Forest Scenic Area Advisory Board will meet at 8:30 a.m. on July 31, 1985, at the Lee Vining Presbyterian Church, Lee Vining, California. The agenda of the meeting will include: Review and recommendation of Private Land Guidelines; Visitor Center Sites; Update by the District Ranger.

The meeting will be open to the public. Persons who wish to attend and make oral presentation should notify Eugene E. Murphy, Forest Supervisor, Inyo National Forest, 873 N. Main Street, Bishop, California, 93514, Telephone: (619) 873-5841. Written statements may be filed with the Committee before or after the meeting.

The Committee has established the following rules for public participation: After the Board has completed discussion of each topic, the public will be allowed time for questions or comment.

Dated: July 1, 1985.

Eugene E. Murphy,

Forest Supervisor and Chairman.

[FR Doc. 85-16316 Filed 7-8-85; 8:45 am]

BILLING CODE 3410-11-M

Montana; Gallatin National Forest Plan Draft Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Extension of public review period for the Gallatin National Forest Plan Draft Environmental Impact Statement and legislative DEIS for the Montana Wilderness Study Act (Pub. L. 95-150) area, Hyalite-Porcupine, Buffalo Horn roadless area.

SUMMARY: The period of public review for the Gallatin National Forest Draft Environmental Impact Statement has been extended until August 15, 1985.

ADDRESSES: Requests for further information should be addressed to: Robert E. Breazeale, Gallatin National Forest, Box 130, Bozeman, Montana 59771-0130.

James E. Reid,

Acting Regional Forester.

[FR Doc. 85-16343 Filed 7-8-85; 8:45 am]

BILLING CODE 3410-11-M

Scientific Advisory Board, Mount St. Helens National Volcanic Monument, Gifford Pinchot National Forest, Clark County, Vancouver, WA; Meeting

The Mount St. Helens Scientific Advisory Board will meet at 9 a.m., August 28, 1985, in room 601 of the office the Regional Forester, 319 SW Pine St., Portland, OR 97208, to receive information on and discuss the following:

1. The status of the National Volcanic Monument (NVM).
2. Management of NVM waters.
3. The future role of the Scientific Advisory Board.
4. Open discussion of topics of interest to the Advisory Board.

The meeting will be open to the public. Persons who wish to make a statement to the Board should notify Dr. Jack K. Winjum, Chairperson, c/o Gifford Pinchot National Forest, 500 West 12th Street, Vancouver, WA 98660, 206-696-7570. Written statements may be filed with the Board before or after the meeting.

Dated: June 28, 1985.

Richard A. Ferraro,

Acting Regional Forester.

[FR Doc. 85-16231 Filed 7-8-85; 8:45 am]

BILLING CODE 3410-11-M

Small Business Timber Set-Aside Program

Correction

In FR Doc. 85-14241 beginning on page 24788 in the issue of Thursday, June 13, 1985, make the following correction on page 24793: In the table "Exhibit 1", in the sixth line of the third column, "surplus" should read "deficit".

BILLING CODE 1505-01-M

Rural Electrification Administration

Intent To Conduct Public Scoping Meeting and Prepare an Environmental Assessment

AGENCY: Rural Electrification Administration, USDA.

ACTION: Notice of intent to conduct a public scoping meeting and prepare an environmental assessment.

SUMMARY: The Rural Electrification Administration (REA) intends to conduct a public scooping meeting and prepare an Environmental Assessment (EA) in connection with possible REA approvals relating to a project proposed by Arizona Electric Power Cooperative, Inc. (AEPCO), of Benson, Arizona. The project which will be located entirely within Cochise County, consists of the construction and operation of a 230 kV transmission line that would extend approximately 96 km (60 mi) from AEPCO's Apache Generating Station near Wilcox to a new 230 kV substation to be located southeast of Sierra Vista, Arizona.

DATE: REA will conduct a public scoping meeting on August 8, 1985, at the Thunder Mountain Inn, 1631 South Highway 92, Sierra Vista, Arizona, at 7:30 pm.

ADDRESS: All interested parties are invited to submit written comments to REA prior to, at, or within 30 days after the scoping meeting in order for comments to be part of the formal record. Comments should be sent to Mr. Alexander E. Sherman, Chief, Distribution and Transmission Engineering Branch, Southwest Area—Electric, Rural Electrification Administration, Room 0009, South Agriculture Building, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Mr. Alexander E. Sherman, Southwest Area—Electric, above address, telephone: (202) 382-1915 or FTS 382-1915, or Mr. Dirk Minson, Arizona Electric Power Cooperative, Inc., P.O. Box 670, Benson, Arizona 85602, telephone (602) 586-3631.

SUPPLEMENTARY INFORMATION: REA, in order to meet requirements under the National Environmental Policy Act (NEPA) of 1969, the Council on Environmental Quality Regulations [40 CFR Part 1500) and REA Environmental Policies and Procedures [7 CFR Part 1794], intends to conduct a public scoping meeting and prepare an Environmental Assessment. This notice is in connection with possible REA approvals relating to a proposal by AEPCO for the construction and

operation of a 230 kV transmission line and substation in Cochise County, Arizona.

The proposed project will enable AEPCO to deliver additional electric energy to Sulphur Springs Valley Electric Cooperative, Inc. (SSVEC), one of its members.

Alternatives to be considered by REA include, among other options: (1) No action; (2) wheeling agreements; (3) energy conservation and load management; and (4) alternative transmission corridors.

The public scoping meeting, to be conducted by a representative of REA, will be held to solicit public input and comments including but not limited to, the nature of the proposed project, its possible location, alternatives, and any significant issues and environmental concerns that should be addressed in the EA. Requests for additional information concerning the scoping meeting may be directed to either REA or APECO at the addresses shown above. Copies of the Macro-Corridor Study are available for public review at the offices of REA, AEPCO, and SSVEC and at the public libraries in Benson, Sierra Vista and Tombstone, Arizona.

Any REA approval will be subjet to and contingent upon reaching satisfactory conclusions with respect to the environmental effects of the project, and final action will be taken only after compliance with environmental procedures required by NEPA has been satisfied.

This program is listed in the Catalog of Federal Domestic Assistance as 10.850—Rural Electrification Loans and Loan Guarantees.

Dated: July 5, 1985.

Harold V. Hunter,

Administrator.

[FR Doc. 85-16429 Filed 7-8-85; 10:16 am]

BILLING CODE 3410-15-M

Soil Conservation Service

Central Middle School Land Drainage RC&D Measure, Virginia; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Central Middle School Land Drainage RC&D Measure, Accomac County, Virginia.

FOR FURTHER INFORMATION CONTACT: Mr. Manly S. Wilder, State Conservationist, Soil Conservation Service, 400 North Eighth Street, Richmond, Virginia 23240, telephone 804-771-2455.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Manly S. Wilder, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure concerns a plan for grading, shaping, seeding and draining 6.7 acres of school grounds to better utilize the existing facilities in Accomac County, Virginia. The planned work will include the establishment of 5.1 acres of permanent vegetative cover and installing 6,120 feet of tile drainage.

The Notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Manly S. Wilder.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program. Office of Management and Budget Circular A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

Dated: June 28, 1985.

Manly S. Wilder,

State Conservationist.

[FR Doc. 85-16324 Filed 7-8-85; 8:45 am]

BILLING CODE 3410-16-M

Looney-Mill Creek Watershed, VA; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Looney-Mill Watershed, Botetourt County, Virginia.

FOR FURTHER INFORMATION CONTACT: Manly S. Wilder, State Conservationist, Soil Conservation Service, 400 North Eighth Street, Federal Building, Richmond, Virginia 23240, telephone 804-771-1455.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or nation impacts on the environment. As a result of these findings, Manly S. Wilder, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for watershed protection. The recommended plan includes soil conservation practices on 7,020 acres of cropland and pastureland. Primary effects of the plan include protection of the soil resource base for substained productivity and decreased erosion and sedimentation damage on agricultural lands.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contracting Gerald P. Bowie.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention Program. Office of Management and Budget Circular A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

Dated: June 28, 1985.

Manly S. Wilder,

State Conservationist.

[FR Doc. 85-16322 Filed 7-8-85; 8:45 am]

BILLING CODE 3410-16-M

Rivermont School Flood Prevention RC&D Measure, Virginia; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Rivermont School Flood Prevention RC&D Measure, Tazewell County, Virginia.

FOR FURTHER INFORMATION CONTACT: Mr. Manly S. Wilder, State Conservationist, Soil Conservation Service, 400 North Eighth Street, Richomond, Virginia 23240, telephone 804–771–2455.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Manly S. Wilder, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure concerns a plan for flood damage reduction to the Rivermont Elementary School consists of 900 feet of channel work on the school property in Tazewell County, Virginia. The planned work will include 900 feet of rock-lined channel, the planting of trees and shrubs along the south bank, the construction of pools in the bedrock channel bottom, and the seeding of permanent vegetation in distrubed areas.

The Notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and the various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Manly S. Wilder.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program. Office of Management and Budget Circular A–95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

Dated: June 27, 1985.

Manly S. Wilder,

State Conservationist.

[FR Doc. 85–16323 Filed 7–8–85; 8:45 am]

BILLING CODE 3410–16–M

Lick Creek Watershed, TN; Intent To Deauthorize Federal Funding

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of Intent to Deauthorize Federal Funding.

SUMMARY: Pursuant to the Watershed Protection and Flood Prevention Act, Pub. L. 83–566, and the Soil Conservation Service Guidelines (7 CFR Part 622), the Soil Conservation Service gives notice of the intent to deauthorize Federal funding for the Lick Creek Watershed Project, Greene County, Tennessee.

FOR FURTHER INFORMATION CONTACT: Donald C. Bivens, State Conservationist, Soil Conservation Service, 675 U.S. Courthouse, Nashville, Tennessee 37203, telephone (615) 251–5471.

SUPPLEMENTARY INFORMATION: A determination has been made by Donald C. Bivens that the proposed works of improvement for the Lick Creek Watershed project will not be installed. The sponsoring local organizations have concurred in this determination and agree that Federal funding should be deauthorized for the project. Information regarding this determination may be obtained from Donald C. Bivens, State Conservationist, at the above address and telephone number.

No administrative action on implementation of the proposed deauthorization will be taken until 60 days after the date of this publication in the **Federal Register.**

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention. Office of Management and Budget Circular A–95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

Dated: June 28, 1985.

Louis M. Godbey,

Assistant State Conservationist (Water Resources).

[FR Doc. 85–16345 Filed 7–8–85; 8:45 am]

BILLING CODE 3410–16–M

COMMISSION ON CIVIL RIGHTS

Rhode Island Advisory Committee; Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Rhode Island Advisory Committee to the Commission will convene at 12:00 p.m. and adjourn at 2:00 p.m. on July 29, 1985, at the Brown University/Science Library, 201 Thayer Street, Room 318, Providence, Rhode Island. The purpose of the meeting is to provide an orientation for new members and discuss current and proposed program activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, David H. Sholes or Jacob Schlitt, Director of the New England Regional Office at (617) 223–4671.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, DC, July 2, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85–16203 Filed 7–8–85; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments; Harvard School of Public Health et al.

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR Part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with § 301.5(a) 3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket No. 85–054. Applicant: Harvard School of Public Health, Purchasing Department, Holyoke Center, Cambridge, MA 02138. Instrument: Mass

Spectrometer System, Model MMZAB. Manufacturer: VG Analytical Ltd., United Kingdom. Intended use: The instrument is intended to be used to conduct the following research projects:

1. Amino Acid Sequence of Human Platelet-Derived Growth Factor (PDGF);
2. Synthesis and Structural Studies of Cyclic Peptides;
3. Metabolic Profiling: Artificial Substitutes for Blood;
4. Glycoprotein Structural Studies;
5. Metabolism and Function of Membrane Derived Oligosaccharides;
6. Heparin Structure; and;
7. Connective Tissue Glycoproteins.

Application received by Commissioner of Customs: December 12, 1984.

Docket No. 85-193. Applicant: Drexel University, Department of Materials Engineering, 32nd & Chestnut Streets, Philadelphia, PA 19104. Instrument: Molten Metal Spray-deposition System. Manufacturer: Osprey Metals Ltd., United Kingdom. Intended use: Studies of nickel-base superalloys, iron-base alloys and copper-base alloys. Experiments to be conducted will involve a determination of the effect of process parameters in the unit (e.g. superheat, gas pressure, nozzle to substrate distance, substrate material) on the structural and property integrity of the spray formed material (Ni, Fe and Cu-base alloys). In addition, the instrument will be used for educational purposes in the courses Materials Processing II and Structure and Properties of Materials. Application received by Commissioner of Customs: May 14, 1985.

Docket No. 85-207. Applicant: The University of Iowa Hospitals & Clinics, Newton Road, Iowa City, IA 52242. Instrument: Extracorporeal Shock Wave Kidney Lithotripter. Manufacturer: Dornier Systems GmbH, West Germany. Intended use: The instrument will be used to generate shock waves transmitted into the patient's body in the course of kidney or ureter stone therapy. The physiologic effect of these shock waves will then be evaluated. The instrument will become an integral part of the Urology Residency Program during which residents will become familiar with the clinical indications for use of the lithotripter and will become skilled in its use and in establishing appropriate follow-up care for lithotripter patients. Ongoing continuing medical education courses will include programs related to the use of the instrument and the results of the research investigations. Application received by Commissioner of Customs: May 31, 1985.

Docket No. 85-208. Applicant: North Dakota State Soil Conservation Committee, State Highway Building, Capitol Grounds, Room 213, Bismarck, ND 58505. Instrument: Electromagnetic Ground Conductivity Meter, Model EM-38 and Accessories. Manufacturer: Geonics Ltd., Canada. Intended use: The instrument is intended to be used to identify, delineate and map soils affected by salt concentrations to provide soils information in regards to salinity to land users. Application received by Commissioner of Customs: May 31, 1985.

Docket No. 85-210. Applicant: Mayo Foundation, 200 First Street SW., Rochester, MN 55905. Instrument: Kidney Lithotripter. Manufacturer: Dornier Systems GmbH, West Germany. Intended use: The instrument is intended to be used to destroy renal and ureteral stones and study the patients undergoing the routine clinical application of the instrument. In addition, the instrument will be used to train residents and staff in the use of the machine. Information generated by the investigation of the use of the instrument will be written up and disseminated via appropriate medical journals and by presentation of such information at national meetings. Application received by Commissioner of Customs: May 31, 1985.

Docket No. 85-211. Applicant: University of Rochester Medical Center, Purchasing Services, 70 Goler House, Rochester, NY 14620. Instrument: Microscope Photometer, Model MPV 3 with Accessories. Manufacturer: Leitz Wetzlar, West Germany. Intended use: The instrument is intended to be used for studies of oxygen transport and blood flow. Application received by Commissioner of Customs: May 31, 1985.

Docket No. 85-212. Applicant: University of California, Los Angeles, Department of Chemistry and Biochemistry, 405 Hilgard Avenue, Los Angeles, CA 90024. Instrument: NMR Spectrometer, Model AM500. Manufacturer: Bruker Analytik GmbH, West Germany. Intended use: This instrument will be used by a large base of research workers investigating a wide variety of problems in chemistry, biochemistry, and cell biology. Problems being investigated by the prime user group include (1) an investigation of the pathways of ammonia assimilation in *Neurospora crassa*, (2) a study of the pathways of arginine degradation in *Klebsiella aerogenes*, (3) the possible association of vacuolar arginine with polyphosphates in *N. crassa*, (4) studies of complexation phenomena as models of enzymic catalysis, biological control mechanisms, immunological response, processing of genetic information, ionophore transport, and drug action, (5) elucidation of the molecular mechanism of visual transduction, (6) the mechanisms of voltage-dependent conformational transitions in membrane proteins, (7) the total synthesis of complex natural products, (8) determination of the solution conformation of drugs and their interactions with DNA, (9) investigations of the reversible reactions that occur at enzyme catalytic sites, (10) the determination of relatively low energy conformational barriers in solution, (11) characterization of carborane and metallocarborane clusters as catalysts, and (12) characterization of mixed metal cluster complexes and model coal compounds. The instrument will also be used by graduate students with B.S. degrees in their research that is required to obtain the Ph. D. degree. Application received by Commissioner of Customs: May 31, 1985.

Docket No. 85-214. Applicant: University of Pittsburgh, 3700 O'Hara Street, 848 Benedum Hall, Pittsburgh, PA 15261. Instrument: Electron Microscope, Model JEM-200CX with Accessories. Manufacturer: JEOL, Japan. Intended use: The instrument is intended to be used for study of phase transformations in (1) metallic, ceramic and polymeric systems, (2) mechanical properties, (3) high temperature corrosion and oxidation, (4) magnetic materials, (5) phases in glasses and ceramics, (6) morphology of polymer phases and (7) morphology of catalysts. Specific areas of research include the following:

(1) Research on high temperature materials, hot corrosion and oxidation of superalloys.

(2) Physical metallurgy, phase transformations, magnetic materials;

(3) Physical metallurgy, thermomechanical processing, engineering steels;

(4) Polymers, morphology and crystallization;

(5) Ceramics, hot corrosion, electronic ceramics;

(6) Ion implantation, nuclear physics; and

(7) Catalysts, morphology and life.

The instrument will also be used for teaching purposes in such courses as: Electron Microscopy of Materials, Materials Science and Crystallograpy. Application received by Commissioner of Customs: June 3, 1985.

Docket No. 85-218. Applicant: Marine Biological Laboratory, Woods Hole, MA 02543. Instrument: Imaging Photon Detector. Manufacturer: Instrument Technology, Ltd., United Kingdom.

Intended use: The instrument is intended to be used for investigation of chemiluminescent patterns indicating free calcium gradients in Aequorin-loaded eggs. Application received by Commissioner of Customs: June 5, 1985.

Docket No. 85–219. Applicant: Baylor College of Medicine (USDA/ARS) Children's Nutrition Research Center, 6608 Fannin Street, Medical Towers Building, Room 519, Houston, TX 77030. Instrument: Gas-isotope-Ratio Mass Spectrometer, Model Delta-E with Accessories. Manufacturer: Finnigan MAT Corporation, West Germany. Intended use: The instrument is intended to be used for studies of breath water vapor, breath carbon dioxide, urine, plasma, serum, saliva, breast milk, feces, perspiration, tears, urea, amino acids and fatty acids. Experiments to be conducted will include the following: (1) Natural abundances experiment to determine the partitioning of hydrogen, carbon, oxygen and nitrogen in man. (2) Body composition experiment to validate the feasibility of the isotope dilution technique using ^{2}H and ^{18}O labeled water for total body water determination in differnet populations. (3) Miniature pig experiment to validate the isotope dilution technique using ^{2}H and ^{18}O in miniature pigs against classical desiccation method and to determine the extent of isotope exchange between body water, body fat, and body protein using miniature pigs. (4) Energy expenditure experiment to evaluate the accuracy and precision of the doubly-labeled water technique for energy expenditure measurement in man. Application received by Commissioner of Customs: June 5, 1985.

Docket No. 85–220. Applicant: Woods Hole Oceanographic Institution, Chemistry Department, Woods Hole, MA 02543. Instrument: Mass Spectrometer, Model VG54 with Accessories. Manufacturer: VG Isotopes Ltd., United Kingdom. Intended use: The instrument will be used for measurement of trace element and isotopic variations in continental and oceanic igneous rocks, sediments, and sea water during basic research in earth science and oceanography. The materials to be analyzed will be solid elements that are present in natural rock, mineral or water samples. In addition, the instrument will be used for educational purposes by Ph.D. candidates and students pursuing studies in isotope geochemistry. Application received by Commissioner of Customs: June 5, 1985.

Docket No. 85–221. Applicant: Boston University School of Medicine, School of Public Health, 80 East Concord Street, Boston, MA 02118. Instrument: Electron Microscope, Model JEM–100CXII. Manufacturer: JEOL, Ltd., Japan. Intended use: Studies of pathogenic bacteria, bacterial plasmids and DNA, viruses, proteins to obtain a fundamental understanding of the 'virulence' factors associated with bacterial pathogens with respect to their epidemiology and function in the pathogenic process, and the regulation of their expression and to decipher the basic mechanisms involved in the determination of viral capsid size. The instrument will also be used to teach electron microscopy techniques to graduate and medical students and postdoctoral research fellows. Application received by Commissioner of Customs: June 5, 1985.

Docket No. 85–222. Applicant: Cornell University, Ithaca, NY 14853. Instrument: Laser, Model PLS 20. Manufacturer: Opto-Electronics, Inc., Canada. Intended use: Studies of the picosecond response of optical detectors. Application received by Commissioner of Customs: June 5, 1985.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 85–16310 Filed 7–8–85; 8:45 am]

BILLING CODE 3510–DS–M

Denis J. Fife et al.; Order Modifying Temporary Denial of Export Privileges

In the matter of: Denis J. Fife, individually and doing business as Dimension Systems Ltd., U.K. and Anthony Chan a/k/a Chan Sam-Tai Anthony and WYSH Data Systems, Ltd.

By order of December 6, 1984 (49 FR 48591 (December 13, 1984)), Denis J. Fife, individually and doing business as Dimension Systems Ltd., U.K., Anthony Chan and Wysh Data Systems, Ltd. were temporarily denied all privileges of participating, in any manner or capacity, in transactions involving the export of U.S.-origin commodities or technical data, pursuant to § 388.19 of the Export Administration Regulations (currently codified at 15 CFR Parts 368–399 (1985)) (the Regulations) until the final disposition of a criminal indictment against the respondents and any administrative proceedings that might be brought against them. The United States Department of Commerce (Department) and Denis J. Fife have moved to modify that Order by suspending it as regards Denis J. Fife, individually and doing business as Dimension Systems Ltd., U.K., (hereinafter collectively referred to as Fife), until the entry of an Order disposing of any administrative proceeding against Fife or December 6, 1986, whichever occurs first.

On February 20, 1985, Fife pled guilty to one count of a criminal indictment. The plea agreement between Fife and the Department of Justice provides that Fife's export privileges would be denied from December 6, 1984, the date of the temporary denial order, through December 6, 1986. It further stated that the period of denial after June 1, 1985 would be suspended provided the defendant commits no further violations of the Export Administration Act of 1979, as amended (50 U.S.C. app. 2401–2420 (1982)) (the Act),[1] during the period of suspension.

Based upon the provisions of the plea agreement, I find that an order modifying the December 6, 1984 Order as it applies to Denis J. Fife, individually and doing business as Dimension Systems Ltd., U.K., as proposed above above is warranted and that so modifying this Order will not jeopardize its purpose.

Accordingly, it is hereby—

Ordered that, effective immediately, the Order of December 6, 1984 is modified by suspending the Order as regards the following respondents:

Denis J. Fife, individually and doing business as Dimension Systems Ltd., U.K., with addresses at both 13 Elm Grove Road, Earling, London, W5 England;

and

The Counting House, 352 Pinner Road North Harrow, Middlesex, England

A copy of this Modification of the Order of December 6, 1984 shall be served upon Denis J. Fife and Dimension Systems Ltd., U.K., and a copy of this Modification shall be published in the **Federal Register.**

Dated: June 28, 1985.

Thomas W. Hoya,

Hearing Commissioner.

[FR Doc. 85–16211 Filed 7–8–85; 8:45 am]

BILLING CODE 3510–DT–M

[Case No. 661]

Kurt Behrens; Order Modifying Temporary Denial of Export Privileges

In the matter of: Kurt Behrens, Elisabethbrunnen 5, 5442 Mendig, Federal

[1] The authority granted by the Act terminated on March 30, 1984. The Regulations have been continued in effect by Executive Order 12470, 49 FR 13099, April 3, 1984, under the authority of the International Emergency Economic Powers Act (50 U.S.C. 1701–1706 (1982)).

Republic of Germany, and Delta-Avia Fluggerate GMBH, Heliport, D–5405 Ochtendung, Federal Republic of Germany, and Flugplatz, D–5406 Winningen, Federal Republic of Germany.

By Order of February 1, 1985 (50 FR 5288, Febraury 7, 1985) (the "Order"), the above named Respondents and eight related parties were temporarily denied, pursuant to § 388.19 of the Export Administration Regulations (15 CFR Parts 368–399 (1984)), all privileges of participating in any manner or capacity in the export of U.S.-origin commodities or technical data. The U.S. Department of Commerce (the "Department") has now moved to modify the Order by deleting, from the listing of related parties in Paragraph III, National Helicopter Service and Engineering Company, on the ground that it has no relationship with any respondent or other related party such that it need be named as a related party.

Based on the statement made by the Department, I find that the requested motion is justified, and that granting it will not jeopardize the purpose of the Order.

Accordingly, it is hereby ordered that the Order of February 1, 1985 is modified by deleting, from the listing of related parties in Paragraph III: National Helicopter Service and Engineering Company, 16800 Roscoe Boulevard, Van Nuys, CA 91406.

This Modification of the Order is effective immediately.

Dated: June 28, 1985.

Thomas W. Hoya,

Hearing Commissioner.

[FR Doc. 85–16212 Filed 7–8–85; 8:45 am]

BILLING CODE 3510-DT-M

National Oceanic and Atmospheric Administration

Experimental Fishing Permit; Pacific Coast Groundfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of experimental fishing permit application and request for comments.

SUMMARY: This notice acknowledges receipt of an experimental fishing permit (EFP) application and announces a public comment period. The applicant proposes to delay sorting mid-water trawl catches of Pacific whiting until the catches are landed. The regulations require that catches be sorted at sea and all salmon immediately be returned to the water. An EFP, if granted, would allow a fishing practice which otherwise would be prohibited by Federal regulation.

DATE: Comments on this application must be received by July 11, 1985.

ADDRESS: Send comments to Rolland A. Schmitten, Regional Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE, Bldg. 1, Seattle, WA 98115.

FOR FURTHER INFORMATION CONTACT: Rolland A. Schmitten, 206–526–6150.

SUPPLEMENTARY INFORMATION: The Pacific Coast Groundfish Fishery Management Plan (FMP) and implementing regulations specify that an EFP may be issued to authorize fishing that otherwise would be prohibited.

An EFP application was received which proposes to delay until landing the sorting of salmon taken in a mid-water trawl fishery targeting on Pacific whiting. By delaying sorting until the time of landing the applicant expects to reduce handling and reduce the time before the whiting are placed in the fish hold and preserved with ice. Whiting deteriorate rapidly after death, and reduced handling and prompt preservation is essential to maintain product quality when shoreside processing is involved.

The regulations at § 663.7(i) prohibit the retention of salmon caught in trawl nets, among other types of fishing gear. The normal practice on groundfish trawl vessels is to sort the catch from each tow before storing it in the hold. Species and sizes of fish that are not marketable are discarded during this sorting and salmon also are returned to the sea. Currently, any salmon taken in a trawl and placed in the hold (not returned to the sea immediately) in considered to be retained in violation of § 633.7(i).

The application under consideration is summarized below and is available for public review at the Regional Director's office during the public comment period (see **"ADDRESS"**). The decision to grant or deny this EFP application will be based on the information in the completed application, willingness of the applicant to comply with the terms and conditions of the EFP, advice from the California Fish and Game Department, the Oregon Department of Fish and Wildlife, the Washington Department of Fisheries, the U.S. Coast Guard, the Pacific Fishery Management Council, and the public.

(1) *Purpose and significance.* The purpose of this experiment is to demonstrate that Pacific whiting catches can be handled in this manner without significant impact on salmon stocks and that the quality of Pacific whiting is maintained at a higher level if it is immediately iced (and sorting is delayed). One impediment to development of a wholly domestic Pacific whiting fishery is that the flesh of whiting deteriorates rapidly after death if not refrigerated promptly. Consequently, it is important for the vessels to make short tows and to preserve the catch without delay. If the catch must be sorted on deck to remove any salmon which may be in the catch, whiting quality will suffer due to excess handling and delayed refrigeration.

(2) *Vessel.* The vessel the applicant proposes to use is 69 feet in length, 100 gross tons, and 75 net tons.

(3) *Species.* The applicant intends to target on Pacific whiting. He also expects incidental catches of rockfish and some salmon. The whiting catch would be sold to a local, shore-based processor. Incidental catches of rockfish would be sold to local processors as well, subject to any existing Federal and State regulations. Incidentally-caught salmon would be sorted from the catch at the processing plant and turned over to the Oregon Department of Fish and Wildlife for disposition.

(4) *Time.* The operation would take place from June through October 1985.

(5) *Place.* Rogue River, Oregon, to Newport, Oregon.

(6) *Gear.* A mid-water 546 Polish rope trawl will be used which is legal gear under the current regulation.

(16 U.S.C. 1801 *et seq.*)

Dated: July 3, 1985.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 85–16219 Filed 7–8–85; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Indonesia; Correction

July 3, 1985.

On July 1, 1985 a notice was published in the **Federal Register** (50 FR 27040) which established limits for specified categories of cotton and man-made fiber textile products, produced or manufactured in Indonesia. In the penultimate sentence of paragraph 2 of the notice document and in the final sentence of paragraph 1 of the letter to the Commissioner of Customs which followed that notice, the words "exported during" should be changed to read "subject to." Also in paragraph 1 of

the letter to the Commissioner of Customs the previous restraint period indicated for Category 341 should be changed to "July 1, 1984–June 30, 1985."

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-16304 Filed 7-8-85; 8:45 am]

BILLING CODE 3510-DR-M

Extending Coverage of Export Visa Requirement To Include Certain Man-Made Fiber Textile Produced or Manufactured in Taiwan

July 3, 1985.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on July 22, 1985. For further information contact Eve Anderson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

Background

Under the terms of the agreement effected by exchange of notes dated December 1, 1982, the American Institute in Taiwan (AIT) and Coordination Council for North American Affairs (CCNAA) have agreed to further amend the existing export visa requirement to include braided luggage, handbags and flatgoods of man-made fibers in Category 670pt., which will be visaed as follows:

670–U—Braided luggage in TSUSA number 706.3420
670–A—Braided handbags in TSUSA number 706.3410
670–T—Braided flatgoods in TSUSA number 706.3430

This coverage is in addition to the coverage of cotton, wool and man-made fiber textiles and textile products described in the CITA directive of September 27, 1972, as previously amended. The visa stamp is not being changed and the official authorized to issue visas also remains unchanged at this time.

The expanded visa coverage will be effective on July 22, 1985 for the aforementioned products in Category 670pt., produced or manufactured in Taiwan and exported on and after July 22, 1985. Merchandise in this category exported before July 22, 1985 will not denied entry for lack of a visa.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1985).

Water C. Lenahan,

Chairman, Committee for the Impelementation on Textile Agreements.

July 3, 1985.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury,
Washington, D.C. 20229

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive of September 27, 1972, as amended, which established an export visa requirement for certain cotton, wool and man-made fiber textile and textile products or manufactured in Taiwan.

Effective on July 22, 1985, the directive of September 27, 1972 is hereby further amended to provide that man-made fiber textile products in parts of Category 670 exported on and after July 22, 1985, will be visaed as followed:

670–U–Only TSUSA number 706.3420
670–A–Only TSUSA number 706.3410
670–T–Only TSUSA number 706.3430

Merchandise in the forgoing parts of Category 670 exported before July 22, 1985 shall not be denied entry for lack of a visa.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-16213 Filed 7-8-85; 8:45 am]

BILLING CODE 3510-DR-M

CONSUMER PRODUCT SAFETY COMMISSION

Chronic Hazard Advisory Panel on Di(2-Ethylhexyl)Phthalate; Availability of Draft Report for Public Comment

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of availability of draft report and possible meeting.

SUMMARY: A Chronic Hazard Advisory Panel, established by the Commission to provide advice about the potential chronic hazards presented by Di(2-ethylhexyl)phthalate (DEHP) in consumer products, solicits public comment on its draft report to the Commission. If the Panel deems it necessary, it may hold a meeting, which the public may attend, to review the public comments that are submitted in response to its draft report to the Commission.

DATES: The Panel's draft report is expected to be available on July 15, 1985. Written comments on the draft report should be received by the Office of the Secretary, at the address shown below, by August 14, 1985. If the Panel deems it necessary, it will meet to discuss the comments on its draft report on August 23, 1985; the meeting will start at 9:00 am, is expected to conclude by 5:00 pm, and will be open to the public.

ADDRESSES: Comments on the draft report should be mailed to the Chronic Hazard Advisory Panel on DEHP, Office of the Secretary, Consumer Product Safety Commisson, Washington, D.C. 20207, or delivered to the Reading Room, Consumer Product Safety Commission, 8th Floor, 1111 18th Street, NW., Washington, D.C. Copies of the draft report may be obtained from the Office of the Secretary. The meeting of the Panel to discuss comments, if held, will be in room 456, 5401 Westbard Avenue, Bethesda, Maryland.

FOR FURTHER INFORMATION CONTACT: Sadye Dunn, Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207; (301) 492–6800.

SUPPLEMENTARY INFORMATION: The Chronic Hazard Advisory Panel on DEHP is a seven-member group which the Commission established to advise it concerning the potential chronic hazard of cancer associated with the use of consumer products containing DEHP. The Panel, convened in January, 1985, is addressing the concern that the presence of DEHP as a plasticizer in children's products may result in a substantial exposure of children to a substance that is known to cause cancer in animals. The Panel solicits comment on its known to cause cancer in animals. The Panel solicits comments on its draft report to the Commission, which is expected to be available by July 15, 1985. Copies of the draft report may be obtained from the Office of the Secretary.

Depending on comments received during scientific peer review of the draft Panel report and on written public comments on the report which are received by August 14, 1985, the Panel may decide to hold a meeting to discuss the issues raised by the comments. The meeting, if held, will be on August 23, 1985, and will be open for observation by the public. For further information concerning whether a meeting will be

held, contact Sadye Dunn after August 15, 1985 at the address shown above.

Dated: July 3, 1985.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 85-16311 Filed 7-8-85; 8:45 am]

BILLING CODE 6355-01-M

Notification of Request for Approval of Survey of Residential Users of Gas-Fueled Applicances

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1981 (44 U.S.C. 3501 *et seq.*), the Consumer Product Safety Commission has submnitted to the Office of Management and Budget a request for approval of a survey of residential users of gas-fueled appliances concerning their experiences relighting pilot lights of those appliances.

Information about fires and explosions associated with water heaters available to the Commission indicates that water heaters which utilize liquid petroleum (LP) gas as the fuel are more frequently involved in such incidents than water heaters which utilize natural gas. The Commission proposes to survey persons living in residences with appliances which utilize LP gas as a fuel and persons living in residences with appliances which utilize natural gas to obtain information about the frequency with which pilot lights of those appliances extinguish; experiences of persons who have relighted pilot lights; and practices of gas suppliers in refilling LP gas cylinders or tanks.

The Commission will use the information from this survey in conjunction with other information and data to determine if redesign of appliance controls and gas valves may result in reduction of fires and explosions associated with gas-fueled appliances, and if residential users need additional information about safe operation of such appliances.

Additional Details About the Requested Approval for Collection of Information

Agency Address: Consumer Product Safety Commission, 1111 16th the Street, N.W., Washington, D.C. 20207.

Title of Information Collection: Consumer Use of Gas-Fired Appliances.

Type of Request: Approval of a new plan.

Frequency of Collection: One time.

General Description of Respondents: Persons who live in residences with appliances which utilize LP gas or natural gas as fuel.

Estimated Number of Respondents: 25,000 for screening questions; 1,400 for telephone interview.

Estimated Number of hours of All Respondents: 307

Comments: Comments on this request for approval of collection information should be addressed to Andy Velez-Rivera, Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503; telephone: (202) 395-7340. Copies of the request for approval of collection of information are available from Francine Shacter, Office of Budget, Program Planning, and Evaluation, Consumer Product Safety Commission, Washington, D.C. 20207; telephone: (301) 492-6529.

This is not a proposal to which 44 U.S.C. 3504(h) is applicable.

Dated: July 3, 1985.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 85-16312 Filed 7-8-85; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Advisory Group on Electron Devices; Closed Meeting

SUMMARY: Working Group D (Production) of the DoD Advisory Group on Electron devices (AGED) announces a closed session meeting.

DATE: The meeting will be held at 9:00 a.m., Tuesday, 6 August 1985.

ADDRESS: The meeting will be held at Palisades Institute for Research Services, Inc., 2011 Crystal Drive, One Crystal Park, Suite 307, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: Thomas Henion, AGED Secretrariat, 201 Varick Street, New York, 10014.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Research and Engineering, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group D meeting will be limited to review of research and development programs which the military propose to initiate with industry, universities or in their laboratories. The Working Group D area includes all production aspects of critical electronic components for the defense electronic supply base; the transition of components from research and development into production, e.g., manufacturing technology; policy and acquisition steps necessary to insure that there is a sufficient domestic supply base for critical electronic components; and steps necessary to insure the continuing availability of skilled people to support the critical electronic component supply base. The review will include classified program details throughout.

In accordance with section 10(d) of Pub. L. No. 92-463, as amended, (5 U.S.C. App. II 10(d) (1982)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly, this meeting will be closed to the public.

Dated: July 2, 1985.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Dco. 85-16301 Filed 7-8-85; 8:45 am]

BILLING CODE 3710-01-M

Defense Intelligence Agency Scientific Advisory Committee; Cancellation of Closed Meeting

AGENCY: Defense Intelligence Agency Scientific Advisory Committee, DoD.

ACTION: Notice of cancellation of closed meeting.

SUMMARY: Notice is hereby given that the closed meeting of the DIA Scientific Advisory Committee Intelligence Communications Architecture (INCA) Panel, scheduled for 3 July 1985, that was announced in the **Federal Register** on Tuesday, 18 June 1985 (Vol. 50, FR 25292) has been cancelled.

FOR FURTHER INFORMATION CONTACT: Lt. Col. Harold E. Linton, USAF, Executive Secretary, DIA Scientific Advisory Committee, Washington, D.C. 20301 (202/373-4930).

Dated: July 3, 1985.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 85-16302 Filed 7-8-85; 8:45 am]

BILLING CODE 3810-01-M

Education Benefits Board of Actuaries; Meeting

AGENCY: Department of Defense Education Benefits of Board of Actuaries, DoD.

ACTION: Notice of meeting.

SUMMARY: A meeting of the board has been scheduled to execute the provisions of Chapter 101, title 10, United States Code (10 U.S.C. 2006(e) et. sep.). The Board shall review DoD actuarial methods and assumptions to be used in the valuation of the GI Bill. Persons desiring to 1) attend the DoD Education Benefits Board of Actuaries meeting or 2) make an oral presentation or submit a written statement for consideration at the meeting must notify Ms. Kathy Greenstreet at 696–5793 by July 10, 1985. Notice of this meeting is required under the Federal Advisory Committee Act.

DATE: July 15, 1985, 9:00 a.m. to 4:00 p.m.

ADDRESS: Room 1E801, the Pentagon (River Entrance).

FOR FURTHER INFORMATION CONTACT: Toni Hustead, Executive Secretary, Defense Manpower Data Center, 4th floor, 1600 Wilson Boulevard, Arlington, VA 22209, (202) 696–5869.

Dated: July 2, 1985.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 85–16303 Filed 7–8–85; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the committee: Army Science Board (ASB).

Dates of meeting: Thursday & Friday, July 25, & 26 1985.

Times of meeting: 0830–1700 hours both days (Closed).

Places: BMD Program Office, Crystal City, VA on July 25, and Pentagon, Washington, DC on July 26.

Agenda: The Army Science Board Ad Hoc Subgroup on Ballstic Missile Defense Follow On will meet to discuss Terminal Imaging Radar and Battle Management C ³ of Terminal Defense. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5 U.S.C., Appendix 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–7039 or 695–7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 85–16229 Filed 7–8–85; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the committee: Army Science Board (ASB).

Dates of meeting: Wednesday, July 31, 1985.

Times of meeting: 0800–1700 hours (Closed).

Place: The Pentagon Washington, D.C.

Agenda: The Army Science Board 1985 Summer Study on Manpower Implications of Logistic Support for AirLand Battle—Chair and three subpanel Chairs (Active/U.S. Army Reserve, Army National Guard, and Mobilization Base/Industrial Perspective)—will meet to draft a final report. This meeting will be closed to the public in accordance with section 552(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix I, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039 or 695–7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 85–16230 Filed 7–8–85; 8:45 am]

BILLING CODE 3710-08-M

Military Traffic Management Command; Military Personal Property Claims Symposium; Open Meeting

Announcement is made of a meeting of the Military Personal Property Claims Symposium. This meeting will be held on 7 August 1985 at the Headquarters, Military Traffic Management Command, 5611 Columbia Pike, Falls Church, Virginia, and will convene at 0930 hours and adjourn at approximately 1500 hours.

Proposed Agenda

The purpose of the Symposium is to provide an open discussion and free exchange of ideas with the public on procedural changes to the Personal Property Traffic Management Regulation (DoD 4500.34–R), and the handling of other matters of mutual interest relating to claims actions concerning the Department of Defense Personal Property Movement and Storage Program.

All interested persons desiring to submit topics to be discussed should contact the Commander, Military Traffic Management Command, ATTN: MT–PPM, at telephone number 756–1600, between 0700–1530 hours. Topics to be discussed should be received on or before 25 July 1985.

Robert F. Waldman,

Deputy Director, Directorate of Personal Property.

[FR Doc. 85–16198 Filed 7–8–85; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education

New Awards Under the College Assistance Migrant Program for Fiscal Year 1986; Application Notice

AGENCY: Department of Education.

ACTION: Application Notice for New Awards under the College Assistance Migrant Program for Fiscal Year 1986 (School Year 1986–87).

SUMMARY: Applications are invited for new awards under the College Assistance Migrant Program (CAMP).

The authority for this program is contained in section 418A of Title IV of the Higher Education Act, as amended by Pub. L. 96–374. (20 U.S.C. 1070d–2)

The program provides funds to assist grantees in the design and implementation of projects that address the special educational needs of students who are engaged, or whose families are engaged, in migrant and other seasonal farmwork. The projects may include academic and support services as well as financial assistance to eligible students who are enrolled or admitted for enrollment on a full-time basis in the first academic year at the participating institutions of higher education (IHEs).

Eligible applicants are IHEs and other public or nonprofit private agencies in cooperation with IHEs.

Closing date for transmittal of applications: Applications for new awards must be mailed or hand delivered on or before September 19, 1985.

Applications delivered by mail: Applications sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: 84.149, 400 Maryland Avenue, S.W., Washington, D.C. 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail. Each late applicant will be notified that its application will not be considered.

Applications delivered by hand: Applications that are hand delivered must be taken to the U.S. Department of Education, Application Control Center, Room 5673, Regional Office Building #3, 7th and D Streets, S.W., Washington, D.C.

The Application Control Center will accept hand-delivered applications between 8:00 a.m. and 4:00 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, and Federal holidays. Applications that are hand delivered will not be accepted by the Application Control Center after 4:00 p.m. on the closing date.

Program information: The Secretary awards CAMP grants to IHEs and other agencies, in cooperation with IHEs, for projects of academic and support service and financial assistance to address the special educational needs of migratory and seasonal farmworker students and to enhance the opportunity of these students for success at the postsecondary education level.

The Secretary makes these grants to IHEs and other agencies, in cooperation with IHEs, to assist migratory and seasonal farmworker students who are enrolled or are admitted for enrollment on a full-time basis in the first academic year at an IHE. CAMP provides assistance to help migratory and seasonal farmworker students in—

(1) Making the transition from secondary school to postsecondary school;

(2) Generating the motivation necessary to succeed in postsecondary school; and

(3) Developing the shills necessary to succeed in postsecondary school.

Application forms: Application forms and program information packages are expected to be available by August 1, 1985. These may be obtained by writing to Division of Migrant Education, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW. (Regional Office Building 3, Room 3616), Washington, D.C. 20202.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information package. However, the program information package is only intended to aid applicants in applying for assistance under this program. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or grantee performance requirements beyond those specifically imposed under the statute and regulations.

The Secretary strongly urges that the narrative portion of the application not exceed 25 pages.

The Secretary further urges that applicants not submit information that is not requested.

(Approved by the Office of Management and Budget under control number 1810-0055).

Available funds: The Department of Education has not requested funds for CAMP for Fiscal Year (FY) 1986. However, applications are invited to allow sufficient time to evaluate applications and complete processing prior to the end of the fiscal year in the event that funds are appropriated for the program. Program services are intended to serve eligible participants in the 1986-87 school year.

In FY 1986, it is expected that grant funds will support six (6) projects. With an anticipated appropriation of $1,200,000, most awards will range between $150,000 and $250,000. These estimates do not bind the U.S. Department of Education to a specific number of grants, or to the amount of any grant, unless that amount is other wise specified by statute or regulations.

Applicable regulations: The following regulations apply to this program:

(a) The regulations governing the Migrant Education High School Equivalency Program (HEP) and College Assistance Migrant Program (CAMP) in 34 CFR Part 206.

(b) The Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 75, 77, and 78.

FOR FURTHER INFORMATION CONTACT: Mr. Louis J. McGuinness, Director, Division of Migrant Education, Office of Elementary and Secondary Education, 400 Maryland Avenue, SW. (Regional Office Building 3, Room 3616), Washington, D.C. 20202. Telephone (202) 245-2722.

(20 U.S.C. 1070d-2)

(Catalog of Federal Domestic Assistance No. 84.149, Migrant Education—College Assistance Migrant Program)

Dated: July 3, 1985.

Lawrence F. Davenport,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 85-16279 Filed 7-8-85; 8:45 am]

BILLING CODE 4000-01-M

New Awards Under the High School Equivalency Program for Fiscal Year 1986; Application Notice

AGENCY: Department of Education.

ACTION: Application Notice for New Awards under the High School Equivalency Program for Fiscal Year 1986.

SUMMARY: Applications are invited for new awards under the High School Equivalency Program (HEP).

The authority for this program is contained in section 418A of Title IV of the Higher Education Act, as amended by Pub. L. 96-374. (20 U.S.C. 1070d-2)

The purpose of HEP is to provide grants to institutions of higher education (IHFs) and other agencies, working in cooperation with IHEs, to design and implement projects of academic, support service, and financial assistance to address the special educational needs of migratory and seasonal farmworker students who have not earned a secondary school diploma or its equivalent.

Eligible applicants are IHEs and other public or nonprofit private agencies in cooperation with IHEs.

Closing date for transmittal of applications: Applications for new awards must be mailed or hand delivered on or before September 19, 1985.

Applications delivered by mail: Applications sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: 84.141, 400 Maryland Avenue, SW., Washington, D.C. 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the U.S. Pr stal Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail. Each late applicant wil be notified that its application will not be considered.

Applications delivered by hand: Applications that are hand delivered must be taken to the U.S. Department of Education, Application Control Center, Room 5673, Regional Office Building #3, 7th and D Streets, SW., Washington, D.C.

The Application Control Center will accept hand-delivered applications between 8:00 a.m. and 4:00 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, and Federal holidays. Applications that are hand delivered will not be accepted by the Application Control Center after 4:00 p.m. on the closing date.

Program information: The Secretary awards HEP grants to IHEs and other agencies, in cooperation with IHEs, for projects of academic and support service and financial assistance to address the special educational needs of migratory and seasonal farmworker students and to enhance the opportunity of these students for success at the secondary education level.

The Secretary makes these grants to IHEs and other agencies, in cooperation with IHEs, to assist migratory and seasonal farmworker "drop-out" students in obtaining the equivalency of a secondary school diploma and subsequently gaining employment or being admitted to an IHE or other postsecondary education or training program.

Application forms: Application forms and program information packages are expected to be available by August 1, 1985. These may be obtained by writing to Division of Migrant Education, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW. (Regional Office Building 3, Room 3616), Washington, D.C. 20202.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information package. However, the program information package is only intended to aid applicants in applying for assistance under this program. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or grantee performance requirements beyond those specifically imposed under the statute and regulations.

The Secretary strongly urges that the narrative portion of the application not exceed 25 pages.

The Secretary further urges that applications not submit information that is not requested. (Approved by the Office of Management and Budget under control number 1810-0054).

Available funds: The Department of Education has not requested funds for HEP for Fiscal Year (FY) 1986. However, applications are invited to allow sufficient time to evaluate applications and complete processing prior to the end of the fiscal year in the event that funds are appropriated for the program.

In FY 1986, it is expected that grant funds will support 25 projects. With an anticipated appropriation of $6.3 million, most awards will range between $100,000 and $300,000. These estimates do not bind the U.S. Department of Education to a specific number of grants, or to the amount of any grant, unless that amount is otherwise specified by statute or regulations.

Applicable regulations: The following regulations apply to this program:

(a) The regulations governing the Migrant Education High School Equivalency Program (HEP) and College Assistant Migrant Program (CAMP) in 34 CFR Part 206.

(b) The Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 75, 77, and 78.

FOR FURTHER INFORMATION CONTACT: For further information contact Mr. Louis J. McGuinness, Director, Division of Migrant Education, Office of Elementary and Secondary Education, 400 Maryland Avenue, S.W. (Regional Office Building 3, Room 3616), Washington, D.C. 20202. Telephone (202) 245-2722.

(20 U.S.C. 1070d-2)

(Catalog of Federal Domestic Assistance No. 84.141, Migrant Education—High School Equivalency Program)

Dated: July 3, 1985.

Lawrence F. Davenport,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 16278 Filed 7-8-85; 8:45 am]

BILLING CODE 4000-01-M

Office of Special Education and Rehabilitative Services

Training Personnel for the Education of the Handicapped

Correction

In FR Doc. 85-15155 beginning on page 26029 in the issue of Monday, June 24, 1985, make the following correction:

On page 26031, first column, three lines from the bottom, "March 17, 1985." should have read "March 17, 1986.".

BILLING CODE 1505-01-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

Issuance of Proposed Remedial Order To Apache Oil Co., Inc. and Opportunity for Objection

AGENCY: Economic Regulatory Administration, Energy.

ACTION: Notice of issuance of proposed remedial order to Apache Oil Company, Inc. and notice of opportunity for objection.

Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives notice of a Proposed Remedial Order which was issued to Apache Oil Company, Inc. (Apache). This Proposed Remedial Order charges that Apache charged prices in excess of the maximum legal selling price for motor gasoline during the period October 1, 1979 through December 31, 1979. The violation amount totals $164,153 before interest.

A copy of the Proposed Remedial Order, with confidential information deleted, may be obtained from the Freedom of Information Public Reading Room (MA-232.1), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-6020.

Within fifteen (15) days of publication of this notice, any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals, U.S. Department of Energy, Room 6F-055, 1000 Independence Avenue, SW., Washington, D.C. 20585, in accordance with 10 CFR 205.193. Failure to file a Notice of Objection shall be deemed to be an admission of the findings of fact and conclusions of law stated in the proposed order. If a Notice of Objection is not filed in accordance with § 205.193, the proposed order may be issued as a final Remedial Order by the Office of Hearings and Appeals.

Issued in Washington, D.C. on the 20th day of June, 1985.

Avrom Landesman,

Director, Office of Enforcement Programs, Economic Regulatory Administration.

[FR Doc. 85-16269 Filed 7-8-85; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Proposed Remedial Order To Erickson Refining Corp. and Opportunity For Objection

AGENCY: Economic Regulatory Administration, Energy.

ACTION: Notice of issuance of proposed remedial order to Erickson Refining Corporation and notice of opportunity for objection.

Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives notice of a Proposed Remedial Order which issued to Erickson Refining Corporation (Erickson). This Proposed Remedial Order charges that Erickson misreported its crude oil runs to stills by including ineligible products in those runs during the months of November 1978, August 1979 and October 1979 in its Refiners Monthly Reports. The entitlements violation amount totals $218,183.16, before interest. A copy of the Proposed Remedial Order with confidential information deleted, may be obtained from the Freedom of Information Public Reading Room (MA-232.1), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-6020.

Within fifteen (15) days of publication of this notice, any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals, U.S. Department of Energy, Room 6F-055, 1000 Independence Avenue, SW., Washington, D.C. 20585, in accordance with 10 CFR 205.193. Failure to file a Notice of Objection shall be deemed to be an admission of the findings of fact and conclusions of law stated in the proposed order. If a Notice of Objection is not filed in accordance with § 205.193, the proposed order may be issued as a final Remedial Order by the Office of Hearings and Appeals.

Issued in Washington, D.C. on the 20th day of June, 1985.

Avrom Landesman,

Director, Office of Enforcement Programs, Economic Regulatory Administration.

[FR Doc. 85-16268 Filed 7-8-85; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Proposed Remedial Order To North American Petroleum Co. and Mellon Energy Products Co. Opportunity for Objection

AGENCY: Economic Regulatory Administration, Energy.

ACTION: Notice of issuance of proposed remedial order to North American Petroleum Company and Mellon Energy Products Company and notice of opportunity for objection.

SUMMARY: Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives notice of a Proposed Remedial Order which was issued to North American Petroleum (NAP) and Mellon Energy Products (Mellon). This Proposed Remedial Order charges that NAP, through its subsidiary Lajet, Inc., entered into processing agreement arrangements with Young Refining Corporation for the purpose of lowering its reported crude oil runs to stills so as to qualify for Small Refiner Bias entitlements benefits. NAP's actions were designed to and resulted in the circumvention and contravention of the Entitlements Program. Further, the PRO alleges that NAP misreported its runs to stills, and NAP and Mellon were part of the same firm, and that Mellon received unlawful profits in sales of crude oil and refined petroleum products to other entities in the firm. The violation period covered is from October through December 1975; January through June 1976; March through May 1977 and July through November 1977. NAP's entitlements violations equal $3,356,664, exclusive of interest. Mellon's intra-firm markup violations equal $218,092.15, exclusive of interest.

A copy of the Proposed Remedial Order, with confidential information deleted, may be obtained from the Freedom of Information Public Reading Room, MA-232.1, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-6020.

Within fifteen (15) days of publication of this notice, any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals, U.S. Department of Energy, Room 6F-055, 1000 Independence Avenue SW., Washington, D.C. 20585, in accordance with 10 CFR 205.193. Failure to file a Notice of Objection shall be deemed an admission of the findings of fact and conclusions of law stated in the proposed order. If a Notice of Objection is not filed in accordance with § 205.193, the proposed order may be issued as a final Remedial Order by the Office of Hearings and Appeals.

Issued in Washington, D.C. on the 20th day of June, 1985.

Avrom Landesman,

Director, Office of Enforcement Programs, Economic Regulatory Administration.

[FR Doc. 85-16270 Filed 7-8-85; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. ER85-587-000]

American Electric Power Service Corp.; Filing

July 1, 1985.

The filing Company submits the following:

Take notice that on June 24, 1985, the American Electric Power Service Corporation (AEP) tendered for filing on behalf of its affiliate Columbus & Southern Ohio Electric Company (C&SOE), which is an AEP affiliated operating subsidiary, Modification No. 1 dated May 15, 1985 to the Agreement dated May 1, 1983 (1983 Agreement) between the City of Westerville, Ohio (Westerville) and C&SOE. The Commission has previously designated this Agreement as C&SOE Rate Schedule FERC No. 12.

Section 1 of Modification No. 1 revises Article 3 of the 1983 Agreement by reducing the Notice period for the reservation of Transmission Service from one year to 60 days. Section 2 of Modification No. 1 increases the transmission demand rate for Transmission Service from $1.50 per kilowatt per month to $2.00 per kilowatt per month when C&SOE is the supplying party. This rate for Transmission Service is the same as the rates for such service presently in effect on the AEP System and accepted for filing by the Commission. Section 3 of Modification No. 1 revises Article 7 of the 1983 Agreement by extending the 1983 Agreement for an additional period of three years, commencing on August 1, 1986, and thereafter on an annual basis unless terminated by written notice given one year in advance.

C&SOE requests an effective date of July 31, 1985, and therefore requests waiver of the Commission's notice requirements.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington,

D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules and Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before July 15, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-16333 Filed 7-8-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-588-000]

Arizona Public Service Co.; Filing

July 1, 1985.

The filing Company submits the following:

Take notice that on June 25, 1985, Arizona Public Service Company (Arizona) tendered for filing an Amendment to the Wholesale Power Supply Agreement (Agreement) between Arizona and Papago Tribal Utility Authority (PTUA). Arizona states that this amendment allows PTU to exercise its right to reduce its maximum demand to 6 MW.

Arizona requests an effective date of October 12, 1985, and therefore requests waiver of the Commission's notice requirements.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.21, 385.214). All such motions or protests should be filed on or before July 15, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-16334 Filed 7-8-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI85-527-000]

Bishop Marketing Corp.; Application for Blanket Limited Term Certificate of Public Convenience and Necessity, Limited Partial Abandonment Authorization and Declaration of Limited Jurisdiction

July 2, 1985.

Take notice that on June 26, 1985, Bishop Marketing Corporation ("Bishop"), 711 Louisiana, South Tower, Suite 2670, Houston, Texas 77002, filed an application pursuant to sections 4 and 7 of the Natural Gas Act, 15 U.S.C. 717c, 717f, and the provisions of 18 CFR Part 157, for a blanket limited-term certificate of public convenience and necessity authorizing Bishop to conduct a short-term spot sales marketing program, hereinafter referred to as Bishop Marketing Program, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Approval would (1) authorize the sale of natural gas for resale in interstate commerce; (2) permit limited-term, partial abandonment of certain natural gas sales; (3) confer pre-granted abandonment authorization for sales of natural gas made pursuant to the requested certificate; (4) authorize transportation of natural gas by interstate pipeline companies able and willing to participate in Bishop Marketing Program; and (5) confer pre-granted abandonment authorization for the transportation service allowed under the requested certificate. Bishop also requests the Commission to declare that, with respect to Bishop and its activities, the Commission will only assert Natural Gas Act jurisdiction over sales for resale and transportation for otherwise exempt from the NGA.

Under Bishop Marketing Program, Bishop proposes to sell natural gas qualifying for the section 102, 103, 107 and 108 rates under the Natural Gas Policy Act of 1978 (NGPA), 15 U.S.C. §§ 3301-3432. Only contractually committed gas will be sold. Bishop and participating producers will seek temporary releases of gas from the purchasers in order to meet market demand for natural gas sales. Releasing purchasers will be absolved from take-or-pay liability for any volumes of gas released and sold under the program. Arrangements for transporting the released gas will be made on a case-by-case basis.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 18, 1985, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless Applicant is otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-16335 Filed 7-8-85; 8:45 am]

BILLING CODE 6717-01-M

[ST85-901-000 et al.]

Equitable Gas Co. et al.; Self-Implementing Transactions

July 3, 1985.

Take notice that the following transactions have been reported to the Commission as being implemented pursuant to Part 284 of the Commission's Regulations and sections 311 and 312 of the Natural Gas Policy Act of 1978 (NGPA). The "Recipient" column in the following table indicates the entity receiving or purchasing the natural gas in each transaction.

The "Part 284 Subpart" column in the following table indicates the type of transaction. A "B" indicates transportation by an interstate pipeline pursuant to § 284.102 of the Commission's Regulations.

A "C" indicates transportation by an intrastate pipeline pursuant to § 284.122 of the Commission's Regulations. In those cases where Commission approval of a transportation rate is sought pursuant to § 284.123(b)(2), the table lists the proposed rate and expiration date for the 150-day period for staff action. Any person seeking to participate in the proceeding to approve a rate listed in the table should file a petition to intervene with the Secretary of the Commission.

A "D" indicates a sale by an intrastate pipeline pursuant to § 284.142 of the Commission's Regulations and section 311(b) of the NGPA. Any interested person may file a complaint concerning such sales pursuant to § 284.147(d) of the Commission's Regulations.

An "E" indicates an assignment by an intrastate pipeline pursuant to § 284.163 of the Commission's Regulations and section 312 of the NGPA.

An "F(157)" indicates transportation by an interstate pipeline for an end-user pursuant to § 157.209 of the Commission's Regulations.

A "G" indicates transportation by an interstate pipeline on behalf of another interstate pipeline pursuant to a blanket certificate issued under § 284.221 of the Commission's Regulations.

A "G(LT)" or "G(LS)" indicates transportation, sales or assignments by a local distribution company pursuant to a blanket certificate issued under § 284.222 of the Commission's Regulations.

A "G(HT)" or "G(HS)" indicates transportation, sales or assignments by a Hinshaw Pipeline pursuant to a blanket certificate issued under § 284.222 of the Commission's Regulations.

A "C/F(157)" indicates intrastate pipeline transportation which is incidental to a transportation by an interstate pipeline to an end-user pursuant to a blanket certificate under 18 CFR 157.209. Similarly, a "G/F(157)" indicates such transportation performed by a Hinshaw Pipeline or distributor.

Any person desiring to be heard or to make any protests with reference to a transaction reflected in this notice should on or before July 24, 1985, file with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Producer (18 CFR 385.211 or 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants party to a proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

Docket No.[1]	Transporter/seller	Recipient	Date filed	Subpart	Expiration Date[2]	Transportation Rate (¢/MMBtu)
ST85-901	Equitable Gas Co	PPG industries,Inc	05-01-85	F(157)		
ST85-902	Channel Industries Gas Co	NorVal Gas Co	05-01-85	903		
ST85-903	Delhi Gas Pipeline Corp	Natural Gas Pipeline Co. of America	LTV Steel Co	05-01-85	C	
ST85-904	Delhi Gas Pipeline Corp	Dayton Power and Light Co	05-01-85	C		
ST85-905	Valero Transmission Co	America Distribution Co	05-01-85	C		
ST85-906	Natural Gas Pipeline Co. of America	LTV Steel Co	05-01-85	F(157)		
ST85-907	Columbia Gas Transmission Corp	Anheuser-Busch Cos., Inc	05-02-85	F(157)		
ST85-908	Columbia Gas Transmission Corp	Shenango, Inc	05-02-85	F(157)		
ST85-909	Columbia Gulf Transmission Co	Anheuser-Busch Cos., Inc	05-02-85	F(157)		
ST85-910	Alabama-Tennessee Natural Gas Co	Central Gas Co	05-03-85	B		
ST85-911	Trunkline Gas Co	Cokinos NaturalGas Co	05-03-85	B		
ST85-912	Producer's Gas Co	Northern Indian Public Service Co	05-03-85	D		
ST85-913	PGC Pipeline	Consolidated Edison Co. of NY	05-03-85	D		
ST85-914	Producer's Gas Co	Michigan Consolidation Gas Corp	05-03-85	D		
ST85-915	Trunkline Gas Co	Corpus Christi Gas Gathering, Inc	05-03-85	B		
ST85-916	Panhandler Eastern Pipe Line Co	Northern Indiana Public Service Co	05-03-85	B		
ST85-917	Panhandle Eastern Pipe Line Co	Northern Indiana Public Service Co	05-03-85	B		
ST85-918	Panhandler Eastern Pipe Line Co	Michigan Consolidated Gas Co	05-03-85	B		
ST85-919	Northern Intrastate Pipeline Co	Taft Pipeline Co	05-03-85	C		
ST85-920	Texas Gas Transmission Corp	Diamond Glass Vienna, Inc	05-03-85	F(157)		
ST85-921	ANR Pipeline Co	Reynolds Metals Co	05-03-85	F(157)		
ST85-922	Valero Transmission Co	El Paso Natural Gas Co	05-03-85	C		
ST85-923	Tennessee Gas Pipeline Co	Transco Resources, Inc	05-03-85	B		
ST85-924	United Gas Pipe Line Co	Louisana State Gas Corp	05-07-85	B		
ST85-925	United Gas Pipe Line Co	Jeannette Sheet Glass Corp	05-07-85	F(157)		
ST85-926	Texas Eastern Transmission Corp	Brooklyn Union Gas Co	05-07-85	B		
ST85-927	Texas Eastern Transmission Corp	Orange and Rockland Utilities, Inc	05-07-85	B		
ST85-928	Panhandle Eastern Pipe Line Co	National Can Corp	05-07-85	F(157)		
ST85-929	Midwestern Gas Transmission Co	Reynolds Metal Co	05-07-85	F(157)		
ST85-930	Consolidted Gas Transmission Corp	Cleveland Clinic Foundation	05-07-85	F(157)		
ST85-931	Panhandle Eastern Pipe Line Co	Rock-Tenn Co	05-06-85	F(157)		
ST85-932	Columbia Gas Transmission Corp	U.S. Reduction Co	05-08-85	F(157)		
ST85-933	Columbia Gas Transmission Corp	U.S. Reduction Co	05-08-85	F(157)		
ST85-934	Columbia Gas Transmission Corp	Ralston Purina Co	05-08-85	F(157)		
ST85-935	Columbia Gas Transmission Corp	International Permalite, Inc	05-08-85	F(157)		
ST85-936	Columbia Gas Transmission Corp	Allied Corp	05-08-85	F(157)		
ST85-937	Columbia Gulf Transmission Co	U.S. Reduction Co	05-08-85	F(157)		
ST85-938	Columbia Gulf Transmission Co	Allied Corp	05-08-85	F(157)		
ST85-939	Columbia Gulf Transmission Co	Columbia Gas of KY, inc	05-08-85	B		
ST85-940	Columbia Gulf Transmission Co	U.S. Reduction Co	05-08-85	F(157)		
ST85-941	Columbia Gulf Transmission Co	International Permalite, Inc	05-08-85	F(157)		
ST85-942	Transcontinental Gas Pipe Line Corp	Oak Ridge Textiles Corp	05-09-85	F(157)		
ST85-943	Transcontinental Gas Pipe Line Corp	Louisiana State Gas Corp	05-09-85	B		
ST85-944	Transcontinental Gas Pipe Line Corp	Guilford Mills Co	05-09-85	F(157)		
ST85-945	Texas Gas Transmission Corp	QO Chemicals, Inc	05-09-85	F(157)		
ST85-947	Panhandle Gas Co	Philadelphia Electric Co	05-09-85	D		
ST85-948	Transcontinental Gas Pipe Line Corp	General Tire Co	05-09-85	F(157)		
ST85-949	Panhandle Eastern Pipe Line Co	Kerr Glass Manufacturing Corp	05-09-85	F(157)		
ST85-950	Panhandle Eastern Pipe Line Co	Archer Daniels Midland Co	05-09-85	F(157)		
ST85-951	Panhandle Eastern Pipe Line Co	LVT Steel Co., Inc	05-09-85	F(157)		
ST85-952	Panhandle Eastern Pipe Line Co	Archer Daniels Midland Co	05-09-85	F(157)		
ST85-953	Pandhandle Eastern Pipe Line Co	Brockway, Inc	05-09-85	F(157)		
ST85-954	Tennessee Gas Pipe Line Co	Philadelphia Electric Co	05-13-85	B		
ST85-955	Pandhandle Eastern Pipe Line Co	Indiana Glass Co	05-13-85	F(157)		
ST85-956	Acadian Gas Pipeline System	Bridgeline Gas Distribution Co	05-13-85	C		
ST85-957	Mississippi Fuel Co	Koch Hydrocarbons, Inc., et al	05-14-85	C	10-11-85	15.88
ST85-958	Valero Transmission Co	Transcontinental Gas Pipe Line Corp	05-10-85	C		
ST85-959	Consumers Power Co	Kansas Power and Light Co	05-10-85	G(HT)		
ST85-960	Michigan Gas Storage Co	Consumers Power Co	05-10-85	B		
ST85-961	United Gas Pipe Line Co	United Texas Transmission Co	05-10-85	B		
ST85-962	Gas Gathering Corp	Monterey Pipe Line Co	05-10-85	B		
ST85-963	Panhandle Eastern Pipe Line Co	Reilly Tar and Chemical Corp	05-10-85	F(157)		

Docket No.[1]	Transporter/seller	Recipient	Date filed	Subpart	Expiration Date[2]	Transportation Rate (¢/MMBtu)
ST85-964	Panhandle Eastern Pipe Line Co	Evans Milling Co., Inc	05-10-85	F(157)		
ST85-965	Panhandle Eastern Pipe Line Co	RCA Corp	05-10-85	F(157)		
ST85-966	Panhandle Eastern Pipe Line Co	National Starch and Chemical Corp	05-10-85	F(157)		
ST85-967	Pandhandle Eastern Pipe Line Co	Phenix Transmission Co	05-10-85	B		
ST85-968	Trunkline Gas Co	Allied Corp	05-10-85	F(157)		
ST85-969	Gasdel Pipeline System Inc	Public Service Electric and Gas Co	05-14-85	B		
ST85-970	Panhandle Eastern Pipe Line Co	National By-Products Co	05-14-85	F(157)		
ST85-971	Panhandle Eastern Pipe Line Co	Central Illinois Light Co	05-14-85	F(157)		
ST85-972	Mountain Fuel Resources, Inc	Backer Industries Corp	05-16-85	F(157)		
ST85-973	Texas Eastern Transmission Corp	Elizabeth Gas Co	05-16-85	B		
ST85-974	MGTC, Inc	MIGC, Inc	05-16-85	C		
ST85-975	MIGC, Inc	Cominco American, Inc	05-16-85	F(157)		
ST85-976	ARN Pipe Line Co	Commonwealth Gas Pipeline Corp	05-16-85	B		
ST85-977	ANR Pipeline Co	Columbia Gas Distribution Co. of PA	05-16-85	B		
ST85-978	ANR Pipeline Co	Ohio Gas Co	05-16-85	16B		
ST85-979	ANR Pipeline Co	Orange and Rockland Utilities, Inc	05-16-85	B		
ST85-980	Texas Gas Transmission Corp	Louisana Gas System, Inc	05-16-85	B		
ST85-981	Colorado Interstate Gas Co	Cominco American, Inc	05-16-85	F(157)		
ST85-982	ANR Pipeline Co	National Fuel Gas Supply Corp	05-17-85	G		
ST85-983	ANR Pipeline Co	East Tennessee Natural Gas Co	05-17-85	G		
ST85-984	Columbia Gas Transmission Corp	Orange and Rockland Utilities, Inc	05-17-85	B		
ST85-985	Columbia Gulf Transmission Co	Orange and Rockland Utilities, Inc	05-17-85	B		
ST85-986	Columbia Gas Transmission Corp	Central Hudson and Gas and Electric	054-17-85	B		
ST85-988	Columbia Gas Transmission Corp	International Harvester Co	05-17-85	F(157)		
ST85-989	Columbia Gas Transmission Corp	Interstate Conlainer Corp	05-17-85	F(157)		
ST85-990	Texas Eastern Transmission Corp	Brooklyn Union Gas Co	05-17-85	B		
ST85-991	Delhi Gas Pipeline Corp	Texas Eastern Transmission Corp	05-17-85	C		
ST85-992	Panhandle Gas Co	Baltimore Gas and Electric Co	05-09-85	D		
ST85-993	Panhandle Gas Co	Pacific Lighting Gas Supply Co	05-09-85	D		
ST85-994	Panhandle Gas Co	Transwestern Pipeline Co	05-09-85	D		
ST85-995	Delhi Gas Pipeline Corp	UGI Corp	05-20-85	C		
ST85-996	Delhi Gas Pipeline Corp	Natural Gas Pipeline Co. of America	05-20-85	C		
ST85-997	Delhi Gas Pipeline Corp	Arkansas Oklahoma Gas Co	05-20-85	C		
ST85-998	Delhi Gas Pipeline Corp	Mississippi River Transmisission Corp	05-20-85	C		
ST85-999	Transcontinental Gas Pipe Line Corp	Uthium Corp	05-20-85	F(157)		
ST85-1000	Somerset Gas Service	Columbia Gulf Transmission Co	05-20-85	C	[3]10-28-85	40.00
ST85-1001	Somerset Gas Service	Columbia Gulf Transmission Co	05-20-85	C	[3]10-28-85	40.00
ST85-1002	Delhi Gas Pipeline Corp	Texas Eastern TransmissionCorp	05-20-85	C		
ST85-1003	Texas Eastern Transmission Corp	American Distribution Co	05-24-85	B		
ST85-1005	Midwestern Gas Transmission Co	Reynolds Metals Co	05-23-85	F(157)		
ST85-1006	Columbia Gulf Transmission Co	Tennessee Gas Pipeline Co	05-21-85	G		
ST85-1007	Louisiana Intrastate Gas Corp	Transcontinental Gas Pipe Line Corp	05-21-85	C	10-18-85	29.80
ST85-1008	Louisana Intrastate Gas Corp	ANR Pipeline Co	05-21-85	C	10-18-85	13.61
ST85-1010	Louisana Intrastate Gas Corp	Mid Louisana Gas Co	05-22-85	C	10-19-85	00.00
ST85-1011	Arkla Energy Resources	Mississippi River Transmission Corp	05-22-85	C	10-19-85	101.42
ST85-1012	Transcontinental Gas Pipe Line Corp	Consolidated Gas Transmission Corp	05-20-85	G		
ST85-1013	Transcontinental Gas Pipe Line Corp	NY State Electric and Gas, et at	05-20-85	B		
ST85-1014	Trunkline Gas Co	THC Pipeline Co	05-22-85	B		
ST85-1015	Northern Natural Gas Co	NorVal Gas Co	05-22-85	B		
ST85-1016	MGTC, Inc	MIGC, Inc	05-22-85	C		
ST85-1017	Texas Eastern Transmission Corp	Valero Transmission Co	05-22-85	B		
ST85-1018	Texas Eastern Transmission Corp	Philadelphia Electric Co	05-22-85	B		
ST85-1020	Algonquin GasTransmission Co	Orange Rockland Utilities, Inc	05-24-85	B		
ST85-1021	Texas Eastern Transmission Corp	Public Service Electric and Gas Co	05-28-85	B		
ST85-1022	Texas Eastern Transmission Corp	Public Electric and Gas Co	05-28-85	B		
ST85-1024	Arkansas Oklahoma Gas Corp	Mississippi River Transmission Co	05-28-85	C		
ST85-1025	Panhandle Eastern Pipe Line Corp	Quaker Oats Co	05-28-85	F(157)		
ST85-1028	Panhandle Eastern Pipe Line Co	Broderick Co	05-28-85	F(157)		
ST85-1029	Panhandle Eastern Pipe Line Co	Reinforced Plastic Div	05-28-85	F(157)		
ST85-1030	Superior Offshore Pipeline Co	LGS Intrastate, Inc	05-28-85	B		
ST85-1031	Louisana Intrastate Gas Corp	Creole Gas Pipeline Corp	05-30-85	C	10/27/85	29.80
ST85-1032	Natural Gas Pipeline Co. of America	Mississippi River Transmission Corp	05-30-85	G		
ST85-1033	Panhandle Eastern Pipe Line Co	Richardson Battery Parts Div	05-28-85	F(157)		
ST85-1034	Panhandle Eastern Pipe Line Co	North America Refractories, Co	05-28-85	F(157)		
ST85-1035	United Gas Pipe Line co	City of Pensacola	05-28-85	B		
ST85-1036	Northern Natural Gas Co	Michigan Consolidated Gas Co	05-28-85	B		
ST85-1037	Panhandle Eastern Pipe Line Co	Quemetco, Inc	05-28-85	F(157)		
ST85-1038	Panhandle Eastern Pipe Line Co	Bronson Methodist Hospital, Inc	05-28-85	F(157)		
ST85-1039	Trunkline Gas Co	Bridgeline Gas Distribution Co	05-28-85	B		
ST85-1040	Florida Gas Transmission Co	HNG Industrial Natural Gas Co	05-30-85	B		
ST85-1041	Natural Gas Pipeline Co. of America	Florida Gas Transmission Co	05-29-85	G		
ST85-1043	United Gas Pipe Line Co	EnTrade Corp	05-29-85	F(157)		
ST85-1044	Natural Gas Pipeline Co. of America	Olin Corp	05-30-85	F(157)		
ST85-1046	Michigan Gas Storage Co	Bronson Methodist Hospital	05-29-85	F(157)		
ST85-1047	Louisana Resources Co	ANR Pipeline Co	05-28-85	C		
ST85-1049	Transcontinental Gas Pipe Line Corp	Carboaire Co., Inc	05-28-85	F(157)		
ST85-1050	Arkla Energy Resources	Derby Refining Co	05-30-85	F(157)		
ST85-1051	Natural Gas Pipeline Co. of America	Wabash Alloys, Inc	05-31-85	F(157)		
ST85-1052	Northwest Pipeline Corp	Baker Industries Corp	05-31-85	F(157)		
ST85-1053	Natural Gas Pipeline Co. of America	Westvaco Corp	05-31-85	F(157)		
ST85-1054	El Paso Natural Gas Co	American Distribution Co	05-30-85	B		
ST85-1055	United Gas Pipe Lne Co	Industrial Pipeline Gas Co	05-31-85	B		
ST85-1056	United Gas Pipe Line Co	Babcock and Wilcox Co	05-31-85	F(157)		
ST85-1057	United Gas Pipe Line Co	Mountineer Gas Co., et al	05-31-85	B		
ST85-1058	United Gas Pipe Line Co	United Gas Transmission Co	05-31-85	B		
ST85-1059	United Gas Pipe Line Co	Astex Gas Transmission Co	05-31-85	B		
ST85-1060	United Gas Pipe Line Co	Quivira Gas Co	05-31-85	B		
ST85-1061	Natural Gas Pipeline Co. of America	Archer Daniels Midland Co	05-31-85	F(157)		
5-1062	ANR Pipeline Co	B. F. Goodrich Co	05-31-85	F(157)		
ST85-1063	ANR Pipeline Co	Admiral, Div. of Magic Chef	05-31-85	F(157)		

Docket No.[1]	Transporter/seller	Recipient	Date filed	Subpart	Expiration Date[2]	Transportation Rate (¢/MMBtu)
ST85-1064	El Paso Natural Gas Co	Southwest Gas Corp	05-31-85	B		

[1] The notice of these filings does not constitute a determination of whether the filings comply with the Commision's Regulations.
[2] The intrastate pipeline has sought Commision approval of its transportation rate pursuant to Section 284.123(b)(2) of the Commission's Regulations (18 CFR 284.123(b)(2)). Such rates are deemed fair and equitable if the Commission does not take action by the date indicated.
[3] Somerset Gas Sertvice fled initial reports in docket nos. ST85-100 and ST85-101 on May 20, 1985. They filed their petitions for rate approval in these two docket numbers on May 31, 1985. The expiration dates for review on the rate petitions were calculated using the May 31, 1985, filing date.

[FR Doc. 85-16336 Filed 7-8-85; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. ER85-586-000]

Portland General Electric Co.; Filing

July 1, 1985.

The filing Company submits the following:

Take notice that on June 24, 1985, Portland General Electric Company (PGE) tendered for filing a Sales Agreement with the State of California, Department of Water Resources which provides for the sale of 100 MW of firm energy surplus to PGE for a time period of 1 month. The contract rate for energy to be sold is based upon its incremental cost of production plus an additional amount for fixed charges (not exceeding fully distributed fixed charges) plus the costs of transmission.

PGE states that the reason for the proposed Sales Agreement is to allow it to recover a portion of its fixed charges applicable to certain of its thermal generating resources during a short period of time when such thermal resources are not required for its system loads.

PGE requests an effective date of April 1, 1985, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing have been served upon the State of California, Department of Water Resources, and the Oregon Public Utility Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before July 15, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-16337 Filed 7-8-85; 8:45 am]
BILLING CODE 6717-01-M

[Docket Nos. ER85-468-000, ER85-424-001 and ER85-425-001]

Southwestern Electric Power Co.; Order Accepting for Filing and Suspending Rates, Granting Waiver, Consolidating Dockets and Disapproving Automatic Equity Clause

Issued: June 28, 1985.

Before Commissioners: Raymond J. O'Connor, Chairman; Georgiana Sheldon, A. G. Sousa and Charles G. Stalon.

On April 29, 1985, Southwestern Electric Power Company (SWEPCO) submitted for filing a Transmission Service Agreement with Oklahoma Municipal Power Authority (OMPA).[1] The agreement provides for the transmission of OMPA's 15 MW and 25 MW entitlements in SWEPCO's Pirkey Unit No. 1 and Dolet Hils Unit No. 1, respectively. The proposed charge consists of a cost of service formula rate which is similar to formula rates presently on file for other SWEPCO customers, except that the proposed formula includes 50% of CWIP in rate base. SWEPCO requests waiver of the notice requirements to permit an effective date of May 1, 1985. Service under the agreement, however, will not begin until the date on which SWEPCO conveys to OMPA an undivided share of Pirkey Unit No. 1, which is expected to occur in late June 1985. SWEPCO states that waiver is necessary since OMPA anticipates a sale of bonds in June and needs a Commission order with an effective date prior to such bond sale. Included in SWEPCO's submittal is a letter from OMPA requesting that the Commission accept the proposed agreement for filing, without suspension or hearing, and grant the requested waiver.

[1] The agreement has been designated as Rate Schedule FERC No. 95.

Notice of the filing was published in the **Federal Register** [2] with comments due on or before May 22, 1985. No interventions have been received.

Discussion

Our review of the company's filing indicates that SWEPCO's rates have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential. We shall therefore accept the rates for filing and institute proceedings as discussed below.

We disagree with SWEPCO's contention that its rates are initial rates. The term "initial rates" does not appear in the Federal Power Act and, consequently, is not defined therein. The courts have held that what constitutes a changed versus an initial rate:

> is precisely that type of question we leave to the technical expertiese of the Commission. . . .[3]

At least one court has ventured that an initial rate is a "new service rendered to new customers." *Otter Tail Power Co.* v. *FERC*, 583 F.2d 399, 406 (8th Cir. 1978). In this case, the customer is new, but the service is not. SWEPCO already has rates on file, based on the same cost of service formula, for transmission to other customers from the Pirkey and Dolet Hills units.[4] Those rates have been set for hearing, and will be consolidated for hearing with the rates herein in part because the addition of a new transmission customer may affect either the current or future allocation or amount of cost to the other transmission customers. We therefore find that the addition of OMPA as a transmission customer is similar to the addition of a new service agreement to a filed rate schedule and should likewise be treated as a change in rate. *Cf. Municipal Electric Utilities Association of Alabama* v. *FPC*, 485 F.2d 967 (D.C. Cir 1973). The fact that SWEPCO has

[2] 50 FR 20584 (1985).
[3] *Middle South Energy* v. *FERC*, 747 F.2d 763 (D.C. Cir. 1984) (quoting *Florida Power & Light Co.* v. *FERC*, 617 F.2d 809, 815 (D.C. Cir. 1980)).
[4] Transmission is provided both as part of the requirements service rate (*Cf. Florida Power & Light Co.*, 617 F.2d 809) and separately to another unit owner-participant, NTEC.

chosen to file individual agreements for the same service rather than a standard, generally available rate does not change the underlying fact that the same rate formula (with some minor variations) is being applied in each case to similar transmission service. SWEPCO cannot "secure for itself the benefits of an initial rate simply by how it drafts its filing . . ." *Florida Power & Light, supra,* 617 F.2d 809, 815. Thus, the fact that SWEPCO is providing the same transmission service, under virtually the same formula rate, is not changed simply because SWEPCO has filed a separate rate schedule for such service to each customer.

It would be incongruous indeed, if after the consolidated hearing, the rates paid by some customers for transmission service for the Pirkey and Dolet Hills units were reduced retroactively under the refund provisions, while the rate to OMPA for the same transmission service could only be changed prospectively. We do not believe that this was the result intended by the Congress in enacting the Federal Power Act, which provides in Section 205(b) that:

> No public utility shall, with respect to any transmission or sale subject to the jurisdiction of the Commission, (1) make or grant any under preference or advantage to any person or subject any person to any undue prejudice or disadvantage, or (2) maintain any unreasonable difference in rates, charges, service, facilities, or in any other respect, either as between localities or as between classes of service. 16 U.S.C. 824d(b)

The opportunities for undue prejudice or disadvantage and unreasonable differences in rates would clearly be numerous if utilities could create a nonsuspendable, nonrefundable "initial" rate simply by filing a new service agreement, with some variations in a standard formula, for the same service.[5] We shall therefore suspend the rate as set forth below and make it effective subject to refund.

In *West Texas Utilities Co.*, 18 FERC ¶ 61,189 (1982), we stated that where our preliminary review indicates that the proposed rates may be unjust and unreasonable, but may not be substantially excessive, as defined in *West Texas*, we would generally impose a nominal suspension. Here, our examination suggests that the proposed rates may not yield substantially excessive revenues. Further, as noted, OMPA supports the rates became effective as of May 1, 1985, in order to facilitate the sale of debt securities. For the same reason, OMPA supports the request for waiver of the notice requirements. In light of the affected customer's concurrence in its request, we find good cause to waive the notice requirements and impose only a nominal suspension so that SWEPCO's filing will become effective as modified below as of May 1, 1985, subject to refund.

SWEPCO has included a rate of return formula which is automatically adjusting. For the reasons set forth below, we shall not permit the automatic operation of such a formula. We shall accept for filing a fixed return on common equity of 17.72% (the initial result of the formula), and permit SWEPCO to file an appropriate rate schedule within thirty (30) days of this order. In the event SWEPCO wishes to obtain a return on equity different than 17.72%, it shall file a change in rate pursuant to part 35 of the Commission's regulations.

Further, as we stated today in *New England Power Company*, Docket Nos. ER85-475-000 *et al:*

> [W]e hereby announce our intention to reject all future rate filings which contain a formula rate which automatically adjusts the return on common equity. Automatic adjustment clauses are exceptions to the notice and filing requirements of the Federal Power Act. Even where we have permitted the use of a full cost of service formula, we have not allowed the equity return to be adjusted automatically.
>
> The use of an automatic formula rate for return on equity is inconsistent with our recent generic approach to equity return for electric utilities. In part 37 of our regulations, we have provided for the determination of the average cost of common equity for the jurisdictional operations of electric utilities and a quarterly indexing procedure to update the estimate and establish a benchmark rate of return on common equity for use in individual rate cases. Despite the availability of the quarterly update, the benchmark return on equity used to evaluate a rate is the one which is in effect when a rate filing is made, not a quarterly changing benchmark throughout the duration of the rate. In other words, in RM80-36-000, we thoroughly analyzed our approach to determining rate on equity. In light of the fact that the Commission has so recently visited the question and selected a generic approach which does not include automatically adjusting equity returns, we believe it would be administratively wasteful to continue to consider this issue in case by case adjudications. We shall therefore reject filings containing automatic equity clauses at the threshold as patently deficient. See 18 CFR § 35.5. (Footnotes omitted).

We recognize that the prospective operation of the formula rate of return on equity may have been an issue in the hearing in Docket Nos. ER85-424-000 and ER85-425-000. However, in light of our determination not to accept automatic equity clauses, above, we find that the question of whether the formula should be allowed to operate automatically should no longer be an issue in the consolidated hearing.

Finally, we find that common questions of law and fact may be presented in Docket Nos. ER85-424-000, ER85-425-000 and ER85-468-000. As a result, we shall consolidate these dockets for purposes of hearing and decision.

The Commission orders:

(A) SWEPCO's request for waiver of the notice requirements is hereby granted.

(B) As discussed in the body of this order, SWEPCO is hereby directed to submit within thirty (30) days of the date of this order a revised rate schedule reflecting a 17.72% return on common equity for its rates in Docket No. ER85-468-000.

(C) SWEPCO's submittal is hereby accepted for filing as modified above and suspended to become effective on May 1, 1985, subject to refund.

(D) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 CFR, Chapter I), a public hearing shall be held concerning the justness and reasonableness of SWEPCO's rate.

(E) Docket No. ER85-468-000 is hereby terminated, and the evidentiary hearing established herein is designated as Docket No. ER85-468-001.

(F) Docket No. ER85-468-001 is hereby consolidated with Docket Nos. ER85-424-001 and ER85-425-001 for purposes of hearing and decision.

(G) The presiding administrative law judge designated to preside in Docket Nos. ER85-424-001 and ER85-425-001 shall determine procedures best suited to accommodate consolidation of this docket with the pending proceeding.

(H) The Secretary will promptly publish this order in the **Federal Register.**

By the Commission.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 85-10338 Filed 7-8-85; 8:45 am]

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[5] Indeed, this could result in the employment of a discriminatory rate to create an initial rate. For example, a utility could charge a significantly higher rate to a new customer for the same service being provided to other customers and claim that it was an initial rate because it was different from the other rate.

[Docket No. CI66-470-004 et al.]

Sun Exploration and Production Company et al.; Applications for Certificates, Abandonments of Service and Petitions To Amend Certificates[1]

July 2, 1985.

Take notice that each of the Applicants listed herein has filed an application or petition pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before July 18, 1985, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Person wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

Docket No. and date filed	Applicant	Purchaser and location	Price 1,000 ft [2]	Pressure base
CI66-470-004, D, June 24, 1985	Sun Exploration and Production Company, P.O. Box 2880, Dallas, Texas 75221-2880.	Arkansas Louisiana Gas Company, Red Oak-Norris Field, LeFlore County, Oklahoma.	(1)	
CI66-470-005, D, June 24, 1985	do	Arkansas Louisiana Gas Company, Red Oak-Norris Field, LeFlore County, Oklahoma.	(2)	
CI69-1027-001, E, June 24, 1985	ENSTAR Corporation (Succ. in Interest to Forest Oil Corporation), P.O. Box 2120, Houston, Texas 77252.	Columbia Gas Transmission Corporation, Vermilion Block 161, Federal Domain, Offshore Louisiana.	(3)	14.73
CI79-600-003, D and C, June 25, 1985	The Northwestern Mutual Life Insurance Company, 720 East Wisconsin Avenue, Milwaukee, Wisconsin 53202.	ANR Pipeline Company, Blocks A-595 and A-596, High Island Area, Offshore Texas and East-Half of Block 382, High Island Area, Offshore Texas.	(4)	14.73
CI85-514-000 (CI80-98), B, June 17, 1985	Geo. Oil and Gas Company of Houston, P.O. Box 2511, Houston, Texas 77001.	El Paso Natural Gas Company, Basin Dakota and Blanco Mesaverde Fields, San Juan County, New Mexico.	(5)	
CI85-523-000 B, June 24, 1985	Peake Operating Company, P.O. Box 1386, Charleston, W. Va. 25325-1386.	City Services Oil and Gas Corporation, Sharp-McMillen Lease, Grant and Jefferson Districts of Nicholas County, W. Va.	(6)	D
CI85-522-000 A, June 24, 1985	Marathon Oil Company (Operator), P.O. Box 3128, Houston, Texas 77253.	Texas Eastern Transmission Corporation, South Marsh Island Area, South Marsh Island Block 141 Field, South Addition, Offshore Louisiana.	(7)	14.73
CI85-524-000 B, June 24, 1985	Glen S. Soderstrom, *et al.*, P.O. Box 9354, Amarillo, Texas 79105.	Northern Natural Gas Company, No. 1 Birdwell-Section 190, Block 45, H&TC RR CO. Survey, Hansford County, Texas.	(8)	
CI85-525-000 B, June 24, 1985	W.G. Darsey, III, P.O. Box 53688, Lafayette, La. 70505.	Transcontinental Gas Pipe Line Corporation, Bear Field, Beauregard Parish, Louisiana.	(9)	
CI85-526-000, B, June 24, 1985	ENI Exploration Company, 110 110th Avenue NE., C-21611, Bellevue, Washington 98009.	Transcontinental Gas Pipe Line Corporation Bear Field, Beauregard Parish, Louisiana.	(10)	

[1] Assignment and Bill of Sale to Joseph F. Mueller of Gunter Unit.
[2] Assignment and Bill of Sale to Samson Resources Company of Robert W. Lowry Property.
[3] Assigned from Forest Oil to ENSTAR Corporation Assignment dated 1-27-83.
[4] By amendments dated May 30 and May 31, 1985, Northwestern Mutual and ANR agreed to amend the 1978 Gas Purchase Contract in two respects. *FIRST*, they agreed to delete from coverage under the contract those portions of Blocks A-595 and A-596 that were committed to the contract. *SECOND*, they agreed to add to the commitment under the contract the East-Half of Block 382. In conjunction with these amendments, Northwestern Mutual and ANR also executed a new Gas Purchase Contract, effective 5-51-85.
[5] Sale of dedicated properties to Quinoco Petroleum, Inc. on 1-1-84.
[6] Uneconomical and insubsantial production from old wells in time of abundant gas supply. The gas purchase contract has expired.
[7] Applicant is filing under Gas Purchase Contract dated 4-10-85.
[8] No sales under contract since 8-24-77.
[9] Well depleted—Plugged and Abandoned 11-20-81.
[10] Depletion of reservoir.

Filing Code: A—Initial Service. B—Abandonment. C—Amendment to add acreage. D—Amendment to delete acreage. E—Total Succession. F—Partial Succession.

[FR Doc. 85-10339 Filed 7-8-85; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. CI85-513-000]

Tenngasco Gas Supply Company, HT Gathering Company, Houston Natural Gas Corporation, and Intratex Gas Company vs. Southland Royalty Company, et al.; Complaint

Issued: July 2, 1985.

On June 17, 1985, Tenngasco Gas Supply Company, HT Gathering Company (HT), Houston Natural Gas Corporation and Intratex Gas Company (Complainants) filed a complaint pursuant to Rule 206 of the Commission's rules of practice and procedure against Southland Royalty Company and other producers of natural gas (Respondents) in the Sand Hills, Dune and Waddell Ranch areas of Crane County, Texas.

Complainants state that Respondents are sellers of natural gas to HT [1] pursuant to various contracts, most of which were dated September 12, 1975, and that it was understood by all parties that the gas to be sold by Respondents to HT was not committed or dedicated to interstate commerce. Complainants state that in January 1985 they reviewed the 1975 contracts and other related documents and concluded that sales to HT from the Waddell Ranch area constituted unlawful diversions of gas from interstate commerce in violation of the Natural Gas Act and that the sales were being made at prices in excess of maximum lawful prices under the Natural Gas Policy Act of 1978 (NGPA).

Complainants state on April 25, 1985, HT notified Respondents that it intended to cease accepting deliveries of gas from them and that the Respondents thereupon applied for and were issued a temporary restraining order by the 109th Judicial District Court of Crane County, Texas. The restraining order enjoined Complainants from refusing to purchase residue gas from wells on the Waddell Ranch properties. HT subsequently filed a removal petition removing the state court action to the United States District

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

[1] HT is co-owned by Houston Natural Gas and Tenngasco.

Court for the Western District of Texas, Midland-Odessa Division. HT also filed a motion to dissolve the restraining order.

Complainants allege that at least a portion of the gas being sold by Respondents to HT is subject to a certificate issued by the Commission to Gulf Oil Company on May 28, 1956, in Docket No. G–7156, authorizing the sale of residue casinghead gas from the Waddell Ranch area to El Paso Natural Gas Company. Complainants allege that the sale of such gas by respondents to HT constitutes an unlawful diversion of gas in violation of section 7 of the Natural Gas Act. Complainants request the Commission to find that all casinghead gas produced from the Waddell Ranch area is dedicated to interstate commerce and must be sold, absent proper abandonment authorization, to El Paso at prices not in excess of applicable maximum lawful prices under the NGPA.

Any person desiring to participate in this proceeding must file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with Rules 214 or 211 of the Commission's rules of practice and procedure. All motions to intervene or protests must be filed not later than 30 days following issuance of this notice by the Commission. Any person wishing to become a party to the proceeding must file a motion to intervene. Copies of this complaint are on file with the Commission and are available for public inspection. Respondents to the complaint have been served a copy of the complaint by Complainants; answers to the complaint shall be filed on or before August 1, 1985.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–16340 Filed 7–8–85; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GP85–35–000]

United Gas Pipe Line Co.; Petition

July 2, 1985.

Take notice that on June 18, 1985, United Gas Pipe Line Company (United) filed a petition requesting the Commission to approve a settlement agreement entered into by United, Pennzoil Producting Company (Producing) and Pennzoil Oil & Gas, Inc. (POGI) and to approve the rate treatment proposed by United of payments made by United to Producing and POGI under the Agreement. The Agreement pertains to the payment by United to Producing and POGI of production-related cost allowances authorized by § 271.1104 of the Commission's regulations as promulgated by Order No. 94–A, issued January 23, 1983, 22 FERC ¶ 61,055, and subsequent Order Nos. 94–B, 94–C, 94–D and 94–E, and to the rate treatment to United of these payments.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before July 9, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–16341 Filed 7–8–85; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. ST81–457–002 et al.]

United Gas Pipe Line Co. et al., Extension Reports

July 3, 1985.

The companies listed below have filed extension reports pursuant to Section 311 of the Natural Gas Policy Act of 1978 (NGPA) and Part 284 of the Commission's Regulations giving notice of their intention to continue transportation and sales of natural gas for an additional term of up to 2 years. These transactions commenced on a self-implementing basis without case-by-case Commission authorization. The sales may continue for an additional term if the Commission does not act to disapprove or modify the proposed extension during the 90 days preceding the effective date of the requested extension.

The table below lists the names and addresses of each company selling or transporting pursuant to Part 284; the party receiving the gas; the date that the extension report was filed; and the effective date of the extension. A letter "B" in the Part 284 column indicates a transportation by an interstate pipeline which is extended under § 284.105. A letter "C" indicates transportation by an intrastate pipeline extended under § 284.125. A "D" indicates a sale by an intrastate pipeline extended under § 284.146. A "G" indicates a transportation by an interstate pipeline pursuant to § 284.221 which is extended under § 284.105. The following symbols are used for transactions pursuant to a blanket certificate issued under Section 284.222 of the Commission's Regulations: a "G(HT)", "G(HS)" or "G(HA)", respectively, indicates transportation, sale or assignments by a Hinshaw pipeline; a "G(LT)" indicates transportation by a local distribution company, and a "G(LS)" indicates sales or assignments by a local distribution company.

Any person desiring to be heard or to make any protests with reference to said extension report should on or before July 24, 1985, file with the Federal Energy Regulatory Commission, Washington, D.C. 20406, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules or Practice and Procedure (18 CFR 385.211 or 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants party to a proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

Docket No.	Transporter/seller	Recipient	Date filed	Part 284, subpart	Effective date	Expiration Date [1]
ST81–457–002 [2]	United Gas Pipe Line Co., P.O. Box 1478, Houston, TX 77001	Monterey Pipeline Co	06–06–85	B	09–01–85	09–04–85
ST83–536–001 [2]	Florida Gas Transmission Co., P.O. Box 44, Winter Park, FL 32790.	United Gas Pipe Line Co	05–30–85	G	07–07–85	08–26–85
ST83–733–001 [2]	United Gas Pipe Line Co., P.O. Box 1478, Houston, TX 77001	Southern Natural Gas Co	06–13–85	G	09–09–85	09–11–85

Docket No.	Transporter/seller	Recipient	Date filed	Part 284, subpart	Effective date	Expiration Date [1]
ST83-755-001	Southern Natural Gas Co., P.O. Box 2563, Birmingham, AL 35202.	Columbia Gulf Transmission Co	06-06-85	G	09-04-85	
ST83-756-001	Southern Natural Gas Co., P.O. Box 2563, Birmingham, AL 35202.	Columbia Gulf Transmission Co	06-06-85	G	09-04-85	
ST84-4-001	Natural Gas Pipeline Co. of America, P.O. Box 1208, Lombard, IL 60148.	Southern Natural Gas Co	06-03-85	G	09-04-85	
ST84-27-001 [2]	Trunkline Gas Co., P.O. Box 1642, Houston, TX 77251	Amoco Gas Co	06-03-85	B	07-01-85	09-01-85
ST84-100-001	United Gas Pipe Line Co., P.O. Box 1478, Houston, TX 77001	B & A Pipeline Co	06-05-85	B	09-29-85	
ST84-944-001	Delhi Gas Pipeline Corp., 1700 Pacific Ave., Dallas, TX 75201	Mississippi River Transmission Corp	06-05-85	D	09-05-85	

[1] The pipeline has sought Commission approval of the extension of this transaction. The 90-day Commission review period expires on the date indicated.
[2] These extension reports were filed after the date specified by the Commission's Regulation, and shall be the subject of a further Commission order.
NOTES.—The noticing of these filings does not constitute a determination of whether the filings comply with the Commission's Regulations.

[FR Doc. 85-16342 Filed 7-8-85; 8:45 am]
BILLING CODE 6717-01-M

Office of Energy Research

Availability of Report on Centers for Disease Control Review Panel's Recommendations for Ongoing Savannah River Plant Epidemiological Studies

AGENCY: Office of Energy Research, Energy.

ACTION: Final DOE position and availability of a public comment and meeting report on a Centers for Disease Control Review Panel's recommendations on Health Effects and Epidemiological Studies of Operations at the Savannah River Plant.

SUMMARY: The Department of Energy (DOE) announces the availability of a *Public Comment and Meeting Report: Centers for Disease Control Review Panel's Recommendations on Health Effects and Epidemiological Studies of Operations at the Savannah River Plant* (DOE/ER-0225). The report documents the public comments received by the Department of Energy from December 1, 1984, to January 31, 1985, on a Centers for Disease Control review panel's recommendations on the feasibility and usefulness of conducting further epidemiologic studies. The report also contains the Department of Energy's final position on the review panel's recommendations, and responses to the public comments and questions prepared by the Department of Energy, the Centers for Disease Control, the South Carolina Department of Health and Environmental Control, and the E.I. du Pont de Nemours and Company.

SUPPLEMENTARY INFORMATION: Based on the request of the U.S. Department of Enery, the Centers for Disease Control of the U.S. Department of Health and Human Services organized a panel to review the feasibility and usefulness of conducting further epidemiologic studies of delayed health effects around the Department of Energy's Savannah River Plant. The review and recommendations of the panel were documented in a report entitled *Epidemiologic Projects Considered Possible to Undertake in Populations Around the Savannah River Plant.*

On November 30, 1984, the Department of Energy announced in the **Federal Register** (49 FR 47095) the conduct of a public meeting and a 30-day public comment period between December 1 and December 30, 1984, on the recommendations of the review panel. Based on the requests of individuals and representatives of organizations attending the December 18, 1984, public meeting, the Department of Energy subsequently announced in the **Federal Register** on December 31, 1984 (49 FR 50767) an extension of the public comment period to January 31, 1985.

The Department of Energy received a total of 11 statements on the recommendations of the Centers for Disease Control review panel at the public meeting and during the public comment period. Representatives of organizations participating on a panel at the public meeting—the Department of Energy's Headquarters Office and Savannah River Operations Office, Centers for Disease Control, Oak Ridge Associated Universities, South Carolina Department of Health and Environmental Control, and E. I. du Pont de Nemours and Company—have prepared responses to the comments received. These responses are contained in the public comment and meeting report (DOE/ER-0225).

Availability of Report: Copies of the public comment and meeting report (DOE/ER-0225) have been distributed to each person who has requested a copy of the Centers for Disease Control review panel report entitled *Epidemiologic Projects Considered Possible to Undertake Around the Savannah River Plant,* and those who made a presentation at the December 18, 1984, public meeting or who provided written comments. Copies of the report will also be available for public inspection at the Department of Energy's Public Reading Room at the University of South Carolina, Aiken Campus, University Library, University Parkway, Aiken, South Carolina, and at the Freedom of Information Reading Room, Room 1E-190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC.

Additional copies may be obtained by contacting: Mr. C. G. Halsted, Jr., Assistant Manager for Health, Safety, and Environment, U.S. Department of Energy, Savannah River Operations Office, P.O. Box A, Aiken, South Carolina 29802, (Phone: 803-725-1380).

Final DOE Position: The Centers for Disease Control (CDC) review panel identified three ongoing employee studies which merited high priority. The CDC believes that these studies deserve consideration for extensive protocol development, peer review, and eventual funding. DOE's final position on the CDC recommendations is based on the premise that these three studies shoud provide useful scientific information or radiation epidemiology, and help assure the health and safety of workers and the general public. The CDC recommendations for the three studies are as follows:

- Continued participation in the industry-wide Health and Mortality Study of workers, funded by the DOE.
- Completion and publication of the lung cancer case-control study of Du Pont employees by Du Pont.
- Completion and publication of the leukemia case-control study in Du Pont employees by Du Pont.

Of these three studies, the CDC determined only the industry-wide Health and Mortality Study to have a sufficient number of subjects to provide adequate statistical power to be scientifically valid.

DOE will continue to fund the industry-wide Health and Mortality Study, including investigations of the Savannah River Plant, through Oak Ridge Associated Universities (ORAU) and other contractors. The research organizations participating in DOE epidemiologic research will continue

having periodic technical peer review by their colleagues and will publish their research findings in peer-reviewed scientific journals. Periodic peer-review site visits of DOE-funded research by researchers in non-DOE federal agencies and in academic institutions will occur every three years, and independent advisory committees to each reseach project will review progress annually.

DOE–SR will review results of epidemiologic studies performed by Du Pont, the prime contractor in charge of operations at the SRP. DOE–SR will assure that Du Pont continues to actively participate in the Health and Mortality Study of SRP employees coordinated by ORAU. Since the CDC review panel noted that the other two studies are not expected to have a sufficient number of subjects to provide adequate statistical power to be scientifically valid, Du Pont has indicated the following proposed actions:

• Because ORAU is already planning nested case-control studies of causes-of-death that appear to be in excess at SRP, Du Pont does not plan to take any action on the CDC recommendation to reanalyze the case-control study of leukemia and does not plan to publish the results in a peer-reviewed journal. Upon completion of the ORAU study, Du Pont will reevaluate to determine whether additional assessments are necessary.

• Since the analysis of mortality at SRP due to lung cancer will be included in the ORAU industry-wide study of health effects and mortality of radiation workers, Du Pont does not plan to publish separately the SRP lung cancer study.

In summary, DOE will continue to fund the industry-wide Health and Mortality Study of workers. This study will continue to receive independent peer review, and, periodically, updated results will be published in a peer-reviewed scientific journal. Du Pont will continue to actively participate in the worker study, but does not plan to published data on lung cancer or leukemia results separately since they will be an integral part of the ORAU study of SRP workers.

Issued in Washington, D.C. on June 24, 1985.

James F. Decker,

Acting Director, Office of Energy Research.

[FR Doc. 85–16347 Filed 7–8–85; 8:45 am]

BILLING CODE 6450-01-M

Energy Research Advisory Board; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Public L. 92–463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: Energy Research Advisory Board (ERAB).

Date and Time: August 14, 1985 from 8:30 a.m. to 5:00 p.m.; August 15, 1985 from 8:30 a.m. to 5:00 p.m.; August 16, 1985 from 8:30 a.m. to 12:00 Noon

Place: Battelle Memorial Institute, Lecture Hall, 4000 NE. 41st Street, Seattle, WA 98105.

Contact: Sarah Goldman, Department of Energy, Office of Energy Research, 1000 Independence Avenue, SW., Washington, DC 20585, 202/252–8933.

Purpose of the Parent Board: To advise the Department of Energy (DOE) on the overall research and development conducted in DOE and to provide long-range guidance in these areas to the Department.

Tentative agenda: The specific agenda items and times are frequently subject to last minute changes. Visitors planning to attend for a specific topic should confirm the time prior to and during the day of the meeting.

August 14

8:30 a.m.—Informal discussion/coffee
9:00 a.m.—Administration Items
—Review of meeting logistics
—Minutes of May meeting
—Progress of completed reports
9:15 a.m.—Welcome from Pacific Northwest Laboratory/Battelle
9:45 a.m.—Activities of Richland Operations Office
10:15 a.m.—Break
10:30 a.m.—Overview of Bonneville Power Administration
11:00 a.m.—Discussion of Summer Study Plan
—Subpanel discussion group assignments
11:30 a.m.—Presentation of strawman vote results
12:00 Noon—Lunch
1:00 p.m.—Discussion groups (separate meetings) of the Long Range R&D Strategy Study subpanels
—Supply
—Demand
—Research
—Infrastructure
3:00 p.m.—Break
3:30 p.m.—Plenary summation of subpanel reports
4:50 p.m.—Public Comment (10 minute rule)
5:00 p.m.—Adjourn

August 15

8:30 a.m.—Informal discussion/coffee
9:00 a.m.—Plenary Session—Long Range R&D Strategy Study
10:15 a.m.—Break
10:30 a.m.—Subpanel sessions
12:00 Noon—Lunch
1:00 p.m.—Subpanel sessions
3:00 p.m.—Break
3:15 p.m.—Plenary Session—Long Range R&D Strategy Study
4:00 p.m.—International R&D Panel report
4:50 p.m.—Public Comment (10 minute rule)
5:00 p.m.—Adjourn

August 16

8:30 a.m.—General Business
—Departure plans
—Review Group on NRC Chemistry Study
—Environmental Impacts of Coal
9:00 a.m.—Long Range R&D Strategy Study Steering Committee
9:00 a.m.—Plenary Session—Long Range R&D Strategy Study
11:50 a.m.—Public Comment (10 minute rule)
12:00 Noon—Adjourn meeting

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Sarah Goldman at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda. The Chairperson of the Board is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts: Available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9:00 and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on July 3, 1985.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 85–16348 Filed 7–8–85; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[SAB-FRL-2861-4]

Science Advisory Board; Executive Committee; Open Meeting

Under Public Law 92–463, notice is hereby given that a meeting of the Executive Committee of the Science Advisory Board (SAB) will be held at the Environmental Protection Agency, 401 M Street, S.W., Conference Room 1101, West Tower, Washington, D.C. 20460. The meeting will begin at 9:00 a.m. on both days and will adjourn on July 30 at 5:00 p.m. and on July 31 at approximately 12:00 noon.

The major purposes of this meeting are to enable the Committee to review draft SAB reports on: (1) A Probabilistic Methodology for Analyzing Water Quality Effects of Urban Runoff on Rivers and Streams; (2) OPPE Comparison of Risks and Costs of Hazardous Waste Alternatives: Methods Development and Pilot Studies; and (3) the review of EPA's Ground Water Research Program. In addition, the Committee will discuss new issues

submitted by EPA for SAB review, and other issues of member interest.

The meeting is open to the public. Any member of the public wishing to attend or obtain information should contact Dr. Terry F. Yosie, Director, Science Advisory Board or Mrs. Joanna Foellmer located at 401 M Street, SW., Washington, D.C. 20460 or call (202) 382-4126 before close of business July 23, 1985. The public is advised that seating at the meeting is limited.

Terry F. Yosie,

Director, Science Advisory Board.

July 3, 1985.

[FR Doc. 85-16248 Filed 7-8-85; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 85-167 et al.]

Aircall Northwest, Inc., and Pacific Paging, Inc.; Hearing Designating Order Applications

In re application of:

Aircall Northwest, Inc. For a Construction Permit in the Public Land Mobile Servcie for a new one-way station to operate on frequency 158.70 MHz in Astoria, Oregon.	CC Docket No. 85-167; File No. 24640-CD-P/L-84.
Pacific Paging, Inc. For a Construction Permit to establish an additional facility for one-way station KSV964 to operate on frequency 158.70 MHz in the Public Land Mobile Service near Astoria, Oregon.	File No. 20755-CD-P/ML-1-85.

Adopted May 16, 1985.
Released July 2, 1985.

By the Common Carrier Bureau.

1. Aircall Northwest, Inc. (Aircall) filed an application for a new one-way station to operate on frequency 158.70 MHz in Astoria, Oregon. Pacific Paging, Inc. (Pacific) timely filed an application for a construction permit to establish an additional one-way facility to operate on frequency 158.70 MHz near Astoria, Oregon, requested a comparative hearing and provided a showing that the public interest would be served by holding a hearing. The applications have not been protested.

2. After careful examination of the applications, we find both applicants to be legally, technically, and otherwise qualified to construct and operate the proposed facilities. We further fnd that the proposals of Aircall and Pacific to use the same frequency, 158.70 MHz, in the same geographical area are electrically mutually exclusive. Since Pacific has applied for an additional facility on the same frequency, these applications will not be subject to selection by lottery. *Random Selection Lotteries*, Gen Docket No. 81-768, 93 FCC 2d 952 (1983), *recon. granted in part*, FCC 84-596, released December 4, 1984. Therefore, a comparative hearing will be held to determine which applicant would serve the public interest.

3. Accordingly, it is ordered that the applications of Aircall Northwest, Inc. (File No. 24640-CD-P/L-84) and Pacific Paging, Inc. (File No. 20755-CD-P/ML-1-85), are designated for hearing in a consolidated proceeding pursuant to section 309(e) of the Communications Act of 1934, as amended, upon the following issues:

(a) To determine on a comparative basis, the nature and extent of service proposed by each applicant, including the rates, charges, maintenance, personnel, practices, classifications, regulations, and facilities pertaining thereto;

(b) To determine on a comparative basis, the areas and populations that each applicant will serve within the prospective interference-free area within 43 dBu contours,[1] based upon the standards set forth in § 22.504(a) of the Commission's Rules [2] and to determine and compare the relative demand for the proposed services in said areas; and

(c) To determine, in light of the evidence adduced pursuant to the foregoing issues, what disposition of the referenced applications would best serve the public interest, convenience, and necessity.

4. It is further ordered, that the hearing shall be held at a time and place and before an Administrative Law Judge to be specified in a subsequent Order.

5. It is further ordered, that the Chief, Common Carrier Bureau, is made a party to the proceeding.

6. It is further ordered, that the applicants may avail themselves of an opportunity to be heard by filing with the Commission pursuant to § 1.221 of the rules within 20 days of the release date hereof, a written notice stating an intention to appear on that date for a hearing and present evidence in the issues specified in the Memorandum Opinion and Order.

7. This order is issued under § 0.291 of the Commission's Rules and is effective upon its release date. Petitions for reconsideration will not be entertained. See § 1.106(a)(1) of the rules. Applications for review will be entertained pursuant to § 1.115(e)(3).

8. The Secretary shall cause a copy of this order to be published in the Federal Register.

Federal Communications Commission.

Michael Deuel Sullivan,

Chief, Mobile Services Division, Common Carrier Bureau.

[FR Doc. 85-16283 Filed 7-8-85; 8:45 am]

BILLING CODE 6712-01-M

[1] For the purpose of this proceeding, the interference-free area is defined as the area within the 43 dBu contour as calculated from § 22.504, in which the ratio of desired-to-undesired signal is equal to or greater than R in FCC Report No. R-6404, equation 8.

[2] Section 22.504(a) of the Commission's Rules and Regulations describes a field strength contour of 43 decibels above one microvolt per meter as the limits of the reliable service area for base stations engaged in one-way communications service on frequencies in the 150 MHz band. Propagation data set forth in § 22.504(b) are the proper bases for establishing the location of service contours F(50,50) for the facilities involved in this proceeding. (The applicants should consult with the Bureau counsel with the goal of reaching joint technical exhibits.)

[MM Docket No. 85-170 et al.]

Omaha Channel 54, Inc.; Hearing Designation Order

In re Applications of:

Omaha Channel 54, Inc.	MM Docket No. 85-170; File No. BPCT-840921LC.
Maryland Williams	File No. BPCT-850108KM.
Omaha Telecasters, Inc.	File No. BPCT-850108KQ.
Minority TV of Omaha	File No. BPCT-850108LB.

For Construction Permit For Television Station Omaha, NE.

Adopted: May 24, 1985.
Released: July 2, 1985.

By the Chief, Video Services Division.

1. The Commission, by the Chief, Video Services Division, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications of Omaha Channel 54, Inc. (OCI), Maryland Williams (Williams), Omaha Telecasters, Inc. (Telecasters) and Minority TV of Omaha (Minority) for authority to construct a new commercial television station on Channel 54, Omaha, Nebraska; a petition to accept amendment *nunc pro tunc* and an amendment filed by OCI; and a petition for leave to amend and an amendment filed by Telecasters.[1]

[1] The deadline for filing amendments to the above-captioned applications was February 28, 1985 ("B" cut-off date). On that date OCI filed an amendment changing the nature of its application from a corporation to a limited partnership. The amendment did not contain an original signature. At the time of filing the applicant indicated that Mrs.

Continued

2. Section II, question 5(b), FCC Form 301, inquires whether the applicant or any party to the application, owns or has any interest in a daily newspaper or cable television system and, if so, it calls for a full description of the persons involved and the nature, type and location of that media interest. Williams gave a positive answer to question 5(b), but did not include the required exhibit. Williams will be required to submit the appropriate exhibit in response to question 5(b), to the presiding Administrative Law Judge within 20 days after this Order is released.

3. Section 73.2080(c) of the Commission's Rules requires applicants employing at least five persons full-time to file with the Commission a program designed to provide equal employment opportunities. Telecasters submitted the required program in accordance with the Commission's 5-point model EEO program (FCC Form 396A). However, it did not therein identify, by name, the person responsible for implementing that program. Telecasters will be required to submit the appropriate information required by item 2 of the EEO program to the presiding Administrative Law Judge within 20 days after this Order is released.

4. The effective radiated visual power, antenna height above average terrain and other technical data submitted by each applicant indicate that there would be a significant difference in the size of the areas and populations which would be served by each. Consequently, the areas and populations which would be within the predicted 64 dBu (Grade B) contour, together with the availability of other television service of Grade B or greater intensity, will be considered under the standard comparative issue for the purpose of determining whether a comparative preference should accrue to any of the applicants.

5. No determination has been made that the tower heights and locations proposed by OCI and Williams would not constitute a hazard to air navigation. Accordingly, an appropriate issue will be specified.[2]

6. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since the applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant would serve the public interest, convenience, and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

7. Accordingly, it is ordered, That pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine whether there is a reasonable possibility that the tower heights and locations proposed by Omaha Channel 54, Inc., and Maryland Williams would each constitute a hazard to air navigation.

2. To determine which of the proposals would, on a comparative basis, best serve the public interest.

3. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

8. It is further ordered, That Omaha Channel 54, Inc.'s March 5, 1985, petition to accept amendment *nunc pro tunc* is granted and the accompanying amendment is accepted and Omaha Telecasters, Inc.'s March 19, 1985 Petition for Leave to Amend is granted and the accompanying amendment is accepted.

9. It is further ordered, That Maryland Williams shall submit the appropriate exhibit to question 5(b), section II, FCC Form 301, to the presiding Administrative Law Judge within 20 days after this Order is released.

10. It is further ordered, That Omaha Telecasters, Inc. shall submit the appropriate information required by § 73.2080(c) of the Commission's Rules as discussed in paragraph 3, supra, to the presiding Administrative Law Judge within 20 days after this Order is released.

11. It is further ordered, That Omaha Telecasters, Inc. SHALL AMEND its application to specify tower height above ground level to conform to that approved by the Federal Aviation Administration within 20 days after the release of this Order.

12. It is further ordered, That the Federal Aviation Administration IS MADE A PARTY RESPONDENT to this proceeding with respect to issue 1.

13. It is further ordered, That to avail themselves of the opportunity to be heard, the applicants and the party respondent herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

14 It is further ordered, That the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

Roy J. Stewart,

Chief, Video Services Division Mass Media Bureau.

[FR Doc. 85-16284 Filed 7-8-85; 8:45 am]

BILLING CODE 6712-01-M

[MM Docket No. 85-169 et al.]

Tulsa Broadcasting Group et al.; Hearing Designation Order

In re application of:

Tulsa Broadcasting Group, a limited partnership.	MM Docket No. 85-169; File No. BPCT-840921LI.
EAM Broadcasting	File No. BPCT-850108KL.
Willis Matthews, Jr., Jay Whitecrow and Barbara Johnson d.b.a. Native American Broadcasting Company, a limited partnership.	File No. BPCT-850108KO.
Tulsa Television, Ltd.	File No. BPCT-850108KU.

For Construction Permit Tulsa, OK.

Adopted: May 24, 1985.

Released: July 2, 1985.

By the Chief, Video Services Division.

William, a general partner, had in fact executed the amendment on or before February 28, 1985, but due to Federal Express's error she had not been able to deliver the amendment to counsel for filing by the cut-off date. The executed amendment was filed on March 5, 1985, accompanied by a petition to accept the amendment *nunc pro tunc*. In view of the fact that all parties were put on timely notice concerning the contents of the amendment, none were prejudiced. The amendment was timely filed; only the signature was missing and that was filed five days later. More importantly, the executed amendment was in existence on the "cut-off" date. Under these circumstances, the unopposed petition to accept the amendment nunc pro tunc will be granted. See *Bocanegra/Gerald Broadcasting Group*, Mimeo No. 1470, released December 22, 1982; *Communications Gaithersburg, Inc.*, 60 FCC 2d 237 (1976). Additionally, on March 19, 1985, Telecasters filed a petition for leave to amend and an amendment to its application. The amendment contains a no-hazard notification from the FAA. The petition and amendment have been reviewed and good cause exists for accepting the amendment. Therefore, the petition will be granted and the amendment accepted for filing.

[2] The Federal Aviation Administration has approved Telecasters' overall height above ground at 1354 feet, but in its application to the FCC, Telecasters specified the overall height AGL as 1394 feet. Therefore, Telecasters must amend its application to conform to the height approved by the FAA.

1. The Commission, by the Chief, Video Services Division, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications of Tulsa Broadcasting Group, Inc. (TBG) EAM Broadcasting (EAM), Native American Broadcasting Company (Native), and Tulsa Television, Ltd. (TTL) for authority to construct a new commercial television station on Channel 53, Tulsa, Oklahoma, and a petition for leave to amend and an amendment filed by EAM.[1]

2. The effective radiated visual power, antenna height above average terrain and other technical data submitted by each applicant indicate that there would be a significant difference in the size of the area and population that each proposes to serve. Consequently, the areas and populations which would be within the predicted 64 dBu (Grade B) contour, together with the availability of other television service of Grade B or greater intensity, will be considered under the standard comparative issue for the purpose of determining whether a comparative preference should accrue to any of the applicants.

3. No determination has been made that the tower height and location proposed by TBG and EAM would not constitute a hazard to air navigation. Accordingly, an appropriate issue will be specified.

4. EAM failed to specify the modal number of the antenna (as modified) to be used, which is required by item 7, section V–C, FCC Form 301. Consequently, EAM will be required to submit an appropriate amendment to the presiding Administrative Law Judge, within 20 days after the release date of this Order, specifying the model number required by item 7, section V–C, FCC Form 301.

5. EAM is a limited partnership comprised of one general partner (Ronald Young) and three limited partners (Stuart W. Epperson, Edward G. Atsinger, III, and Jerrold Miller). Stuart W. Epperson holds a 37.5% equity interest in the applicant and is also 100% owner of KAKC(AM) and KCFO(FM), Tulsa, Oklahoma. Section 73.3555(b)(1) of the Commission's Rules provides that no license for a television station shall be granted to any party if such party directly or indirectly owns, operates, or controls an AM or FM broadcast station and the grant of such license will result in the Grade A contour of the proposed television station encompassing the entire community to which the AM or FM station is licensed. Note 4 to this rule provides, *inter alia*, that applications for UHF television facilities "will be handled on a case-by-case basis in order to determine whether common ownership, operation, or control of the stations in question would be in the public interest." We have recently held, however, that limited partnership interests are nonattributable where the limited partner would not be involved in any material respect in the management or operation of the proposed broadcast station. *Attribution of Ownership Interests*, 97 FCC 2d 997 (1984), *reconsideration granted in part*, FCC 85–252, adopted May 9, 1985. The Commission retained the cross-interest policy as to other attributable media interests in the same area. *Id.* at 1030. In adopting the new attribution standards, the Commission stated that its action did not affect the substantive aspects of the cross-interest policy, which it would continue to administer on a case-by-case basis. EAM has not indicated that Epperson will be insulated from the management or operation of the proposed television station. In the absence of this information regarding Mr. Epperson's involvement in the management and operation of the proposed station, we conclude that the interest is attributable. Accordingly, an appropriate multiple ownership/cross interest issue will be designated.

6. TBG amended its application on February 28, 1985, to change its ownership structure from a corporation to a limited partnership. However, the total equity interests for the respective partners total more than 100% (in fact the equity interests total 102.5%). Accordingly, TBG will be required to submit an amendment to the presiding Administrative Law Judge, within 20 days after the release date of this Order, correcting the equity interests of the parties to its application.

7. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since these applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant serve the public interest, convenience, and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

8. Accordingly, It is ordered, That pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine whether there is a reasonable possibility that the tower heights and locations proposed by Tulsa Broadcasting Group, Inc., and EAM Broadcasting would each constitute a hazard to air navigation.

2. To determine, with respect to EAM Broadcasting, whether the interest of Stuart Epperson in radio stations KAKC and KCFO(FM), Tulsa, Oklahoma and his interest in the applicant, is inconsistent with § 73.3555 of the Commission's Rules or the Commission's cross interest policy and, if so, whether common ownership, operation, or control of KAKC and KCFO(FM), Tulsa, Oklahoma and the proposed television station would be consistent with the public interest.

3. To determine which of the proposals would, on a comparative basis, best serve the public interest.

4. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

9. It is further ordered, That EAM Broadcasting's March 14, 1985 Petition for Leave to Amend is granted and the accompanying amendment is accepted for filing, for Section 1.65 purposes only.

10. It is further ordered, That the Federal Aviation Administration is made a party respondent to this proceeding with respect to issue 1.

11. It is further ordered, That Tulsa Broadcasting Group, A Limited Partnership, shall submit an appropriate amendment to the presiding Administrative Law Judge, within 20 days after the release date of this Order correcting the equity interests of its partners as discussed in paragraph 6, supra.

12. It is further ordered, That EAM Broadcasting shall submit an appropriate amendment to the presiding Administrative Law Judge, within 20 days after the release date of this Order, to specify the model number of its antenna as required by item 7, section V–C, FCC Form 301.

13. It is further ordered, That to avail themselves of the opportunity to be heard, the applicants and the party respondent herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, the triplicate, a written appearance stating an intention to appear on the date fixed for the hearing

[1] The deadline for filing amendments to the above-captioned applications was February 28, 1985. EAM filed a petition for leave to amend and an amendment to its application on March 14, 1985. The amendment corrects an allegedly typographical error in the equity percentages of two of EAM's limited partners. The petition is unopposed and good cause exists for accepting the amendment. The petition will be granted and the amendment accepted for filing for § 1.65 purposes only.

and to present evidence on the issues specified in this Order.

14. It is further ordered, That the applicants herein shall, pursuant to § 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

Roy J. Stewart,

Chief, Video Services Division Mass Media Bureau.

[FR Doc. 85-16285 Filed 7-8-85; 8:45 am]

BILLING CODE 6712-01-M

New FM Stations; Applications for Consolidated Hearing; Elkton Broadcasters, Inc. and Stonewall Broadcasting Co.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, city, and State	File No.	MM Docket No.
A. Elkton Broadcasters, Inc., Elkton, VA.	BPH-840402IA	85-164
B. Ernest P. Evans et al., d.b.a. Stonewall Broadcasting Co., Elkton, VA.	BPH-840607IA	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety in a sample standardized Hearing Designation Order (HDO) which can be found at 48 FR 22428, May 18, 1983. The issue headings shown below correspond to issue headings contained in the referenced sample HDO. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. Comparative, A, B
2. Ultimate, A, B

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding may be obtained, by written or telephone request, from the Mass Media Bureau's Contact Representative, Room 242, 1919 M Street, N.W., Washington, D.C. 20554. Telephone (202) 632-6334.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 85-16287 Filed 7-8-85; 8:45 am]

BILLING CODE 6712-01-M

New FM Stations; Applications for Consolidated Hearing; KAYS Inc. et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, city, and State	File No.	MM Docket No.
A. KAYS Inc., Rock Springs, WY.	BPH-830216AE	85-163
B. Mesa Broadcasting Co., Rock Springs, WY.	BPH-830222AD	
C. Faith Broadcasting, Rock Springs, WY.	BPH-830520AO	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety in a sample standardized Hearing Designation Order (HDO) which can be found at 48 FR 22428, May 18, 1983. The issue headings shown below correspond to issue headings contained in the referenced sample HDO. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. Air Hazard, B, C
2. Comparative, A, B
3. Ultimate, A, B

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding may be obtained, by written or telephone request, from the Mass Media Bureau's Contact Representative, Room 242, 1919 M Street, N.W., Washington, D.C. 20554. Telephone (202) 632-6334.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 85-16289 Filed 7-8-85; 8:45 am]

BILLING CODE 6712-01-M

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

July 2, 1985.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511.

Copies of the submission are available from Jerry Cowden, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on this information collection should contact David Reed, Office of Management and Budget, Room 3235 NEOB, Washington, D.C. 20503, (202) 395-7231.

OMB Number: 3060-0004

Title: Sections 1.1305 & 1.1311, Major actions and environmental information to be submitted with applications for authority to construct major communications facilities

Action: Revision

Respondents: Individuals or households, state or local governments, businesses (including small businesses), and non-profit institutions

Estimated Annual Burden: 545 Responses; 2,725 Hours

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 85-16291 Filed 7-8-85; 8:45 am]

BILLING CODE 6712-01-M

[CC Docket No. 85-147 et al.]

Air Beep of Florida, Inc., et al.; Hearing

In re application of:

Air Beep of Florida, Inc. For Construction Permit to establish a new one-way paging facility on frequency 158.70 MHz for Station KUC847 in the Public Land Mobile Service at Tavernier, Florida.	CC Docket No. 85-147; File No. 25576-CD-P-83.
Gabriel Communications Corporation. For Construction Permit to establish additional one-way paging facilities on frequency 158.70 MHz for station KRM963 in the Public Land Mobile Service at Perrine, Florida.	File No. 26374-CD-P-1-83.

Order Designating Applications for Hearing

Adopted May 8, 1985.
Released July 2, 1985.

By the Common Carrier Bureau.

1. On July 27, 1983, Air Beep of Florida, Inc. (Airbeep) filed with the Commission an application for a new one-way paging station at Tavernier Okeechobee, Florida. Within the sixty day cut-off period Gabriel Communications Corporation (Gabriel) filed an application on frequency 158.70 MHz for an additional location for Station KRM963 at Perrine, Florida. The applications have not been protested. Since Gabriel's application is for an additional facility these applications are not subject to decision by lottery.

2. We find both applicants to be legally, technically and otherwise qualified to construct and operate the proposed facilities. We further find that the proposals of Air Beep and Gabriel to use frequency 158.70 MHz in the same geographical area are electrically mutually exclusive; therefore, a comparative hearing will be held to determine which applicant would best serve the public interest.

3. Accordingly, it is ordered pursuant to section 309 of the Communications Act of 1934, as amended, that the applications of Air Beep of Florida, Inc., File No. 25576–CD–P–83 and of Gabriel Communications Corporation, File No. 26374–CD–P–1–83 to operate on frequency 158.70 MHz are designated for hearing in a consolidated proceeding upon the following issues:

(a) To determine on a comparative basis, the nature and extent of service proposed by each applicant, including the rates, charges, maintenance, personnel, practices, classifications, regulations, and facilities pertaining thereto;

(b) To determine on a comparative basis, the areas and populations that each applicant will serve within the prospective interference-free area within the 43 dBu contours,[1] based upon the standards set forth in § 22.504(a) of the Commission's Rules,[2] and to determine and compare the relative demand for the proposed services in said areas; and

(c) To determine, in light of the evidence adduced pursuant to the foregoing issues, what disposition of the referenced applications would best serve the public interest, convenience, and necessity.

4. It is further ordered, that the hearing shall be held at a time and place before an Administrative Law Judge to be specified in a subsequent Order.

5. It is further ordered, that the Chief, Common Carrier Bureau, is made a party to the proceeding.

6. It is further ordered, that the applicants may avail themselves of an opportunity to be heard by filing with the Commission pursuant to § 1.221 of the Commission's Rules within 20 days of the release date hereof a written notice stating an intention to appear on that date for a hearing and present evidence in the issues specified in the Memorandum Opinion and Order.

7. This order is issued under § 0.291 of the Commission's Rules and is effective on its release date. Applications for review may be filed under § 1.115 of the rules within 30 days of public notice [*see* § 1.4(b)(2)].

8. The Secretary shall cause a copy of this order to be published in the **Federal Register.**

Federal Communications Commission.

Michael Deuel Sullivan,

Chief, Mobile Services Division, Common Carrier Bureau.

[FR Doc. 85–16288 Filed 7–8–85; 8:45 am]

BILLING CODE 6712-01-M

[MM Docket No. 85–190, et al.]

James M. Cope et al.; Hearing

In re applications of:

James M. Cope, Dardanelle, Arkansas. Req: 1490 kHz, 0.25 kW 1 kW–LS, U.	MM Docket No. 85–190; File No. BP–840507AA.
Brenda J. Miller, Dardanelle, Arkansas. Req: 1490 kHz, 0.25 kW, 1 kW–LS, U.	File No. BP–841001AJ.
Liz Womack and Teddy Ann Moore d/b/a Ark Valley Broadcasters, Dardanelle, Arkansas. Req: 1490 kHz, 0.25 kW, 1 kW–LS,U.	File No. BP–841001AK.

For Construction Permit

Hearing Designation Order

Adopted: June 4, 1985.
Released: July 3, 1985.

By the Chief, Mass Media Bureau.

1. The Commission, by the Chief, Mass Media Bureau, acting pursuant to delegated authority, has under consideration the above-captioned mutually exclusive applications for new AM broadcast stations.

2. All applicants are qualified to construct and operate as proposed. However, since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding.

3. Accordingly, it is ordered, that pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order upon the following issues:

1. To determine, which of the proposals would, on a comparative basis, best serve the public interest.

2. To determine, in light of the evidence adduced pursuant to the foregoing issue, which of the applications should be granted.

4. It is further ordered, that in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M Street, NW., Washington, D.C. 20554.

5. It is further ordered, that to avail themselves of the opportunity to be heard and pursuant to § 1.221(c) of the Commission's Rules, the applicants shall within 20 days of the mailing of this Order, in person or by attorney, file with the Commission in triplicate written appearances stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

6. It is further ordered, that pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, the applicants shall give notice of the hearing as prescribed in the rule, and shall advise the Commission of the publication of the notice as required by § 73.3594(g) of the rules.

Federal Communications Commission.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 85–16290 Filed 7–8–85; 8:45 am]

BILLING CODE 6712-01-M

[CC Docket No. 85–208 et al.]

Digital Paging Systems, Inc. et al.; Hearing

In re applications of:

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[1] For the purpose of this proceeding, the interference-free area is defined as the area within the 43 dBu contour as calculated from § 22.504, in which the ratio of desired-to-undesired signal is equal to or greater than R in FCC Report No. R–6404, equation 8.

[2] Section 22.504(a) of the Commission's Rules and Regulations describes a field strength contour of 43 decibels above one micorvolt per meter as the limits of the reliable service area for base stations engaged in one-way communications service on frequencies in the 150 MHz band. Propagation data set forth in § 22.504(b) are the proper bases for establishing the location of service contours F(50,50) for the facilities involved in this proceeding. (The applicants should consult with the Bureau counsel with the goal of reaching joint technical exhibits.)

Digital Paging Systems, Inc	CC Docket No. 85-208; File No. 50077-CM-P-74.
Private Networks, Inc.	File No. 50184-CM-P-74.
Daycom Corporation	File No. 50204-CM-P-74.
Multipoint Information Systems, Inc. For Construction Permits in the Multipoint Distribution Service for a new station on Channel 2, at Pittsburgh, Pennsylvania.	File No. 50207-CM-P-74.

Memorandum Opinion and Order

Adopted June 27, 1985.
Released July 2, 1985.
By the Common Carrier Bureau.

1. For consideration are the above-referenced applications. These applications are for construction permits in the Multipoint Distribution Service and they propose operations on Channel 2 at Pittsburgh, Pennsylvania. The applications are therefore mutually exclusive and require comparative consideration. These applications have been amended as a result of informal requests by the Commission's staff for additional information. There were no petitions to deny filed.

2. Upon review of the captioned applications, we find that these applicants are legally, technically, financially, and otherwise qualified to provide the services which they propose, and that a hearing will be required to determine, on a comparative basis, which of these applications should be granted.

3. Accordingly, it is hereby ordered, that pursuant to section 309(e) of the Communications Act of 1934, as amended, 47 U.S.C. 309(e) and § 0.291 of the Commission's Rules, 47 CFR 0.291, the above-captioned applications are designated for hearing, in a consolidated proceeding, at a time and place to be specified in a subsequent Order, to determine, on a comparative basis, which of the above-captioned applications should be granted in order to best serve the public interest, convenience and necessity. In making such a determination, the following factors shall be considered: [1]

(a) The relative merits of each proposal with respect to efficient frequency use, particularly with regard to compatibility with co-channel use in nearby cities and adjacent channel use in the same city;

(b) The anticipated quality and reliability of the service proposed, including installation and maintenance programs; and

(c) The comparative cost of each proposal considered in context with the benefits of efficient spectrum utilization and the quality and reliabilty of service as set forth in issues (a) and (b).

4. It is further ordered, that Digital Paging Systems, Inc., Private Networks, Inc., DayCom Corporation, Multipoint Information Systems, Inc., and the Chief of Common Carrier Bureau, are made parties to this proceeding.

5. It is further ordered, that parties desiring to participate herein shall file their notices of appearance in accordance with the provisions of § 1.221 of the Commission's Rules, 47 CFR 1.221.

6. It is further ordered, that any authorization granted to Digital Paging Systems, a wholly-owned subsidiary of Graphic Scanning Corporation, as a result of the comparative hearing shall be conditioned as follows:

(a) without prejudice to, reexamination and reconsideration of that company's qualifications to hold an MDS license following a decision in the hearing designated in *A.S.D. ANSWERING Service, Inc., et al.* FCC 82-391, released August 24, 1982, and shall be specifically conditioned upon the outcome of that proceeding.

7. The Secretary shall cause a copy of this Order to be published in the **Federal Register.**

James R. Keegan,
Chief, Domestic Facilities Division, Common Carrier Bureau.

[FR Doc. 85-16297 Filed 7-8-85; 8:45 am]
BILLING CODE 6712-01-M

[1] Private Networks, Inc. (PNI) filed a petition to designate an additional issue for hearing. In its petition, PNI requested comparative credit for its minority ownership in 25 of the 26 markets, including Pittsburgh, Pennsylvania, where it filed mutually exclusive Channel 2 applications. Minority ownership is not a factor the Commission has found to be relevant in comparative hearings for single channel MDS stations. *See* Frank K. Spain, 77 F.C.C. 2d 20 (1980). Accordingly, we are hereby dismissing the petition.

[MM Docket No. 85-182]

Great Arizona Broadcasting Co. et al.; Hearing

In re applications of:

Great Arizona Broadcasting Co.	MM Docket No. 85-182; File No. BPCT-841123KE.
Lifestyle Broadcasting Corp	File No. BPCT-850212KE.
Doylan Forney	File No. BPCT-850213KF.
Susan Cordova Kelly	File No. BPCT-850214KK.
Marimar Communications Corp.	File No. BPCT-850215KE.
Dorothy O. Schulze and Irene Wagner d/b/a Schulze-Wagner Partnership.	File No. BPCT-850215KF.
Tolleson Broadcasting Corp	File No. BPCT-850215KI.
Tolleson-Gomez Communications, Inc.	File No. BPCT-850215KN.
Alden Television, Inc	File No. BPCT-850215LA.
Hector Garcia Salvatierra, Limited Partnership.	File No. BPCT-850215LB.
Madrid Communications Limited Partnership.	File No. BPCT-850215LE.
Aztec Broadcasting Corp	File No. BPCT-850215LG.
Estrella Communications Limited Partnership, an Arizona Limited Partnership.	File No. BPCT-850215LK.
Maricopa Media, Inc	File No. BPCT-850215LL.
T.V. Broadcasters, Inc	File No. BPCT-850215LM.
Li-Com Limited Partnership	File No. BPCT-850215LN.

For Construction Permit Tolleson, Arizona.

Hearing Designation Order

Adopted: May 31, 1985.
Released: July 2, 1985.
By the Chief, Video Services Division.

1. The Commission, by the Chief, Video Services Division, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications for a new commercial television station to operate on Channel 51, Tolleson, Arizona.

2. The effective radiated visual power, antenna height above average terrain and other technical data submitted by each applicant indicate that there would be a significant difference in the size of the area and population that each proposes to serve. Consequently, the areas and populations which would be within the predicted 64 dBu (Grade B) contour, together with the availability of other television service of Grade B or greater intensity, will be considered under the standard comparative issue, for the purpose of determining whether a comparative preference should accrue to any of the applicants.

3. No determination has been reached that the tower height and location proposed by Estrella Communications Limited Partnership and Susan Cordova Kelly would not constitute a hazard to air navigation. Accordingly, an issue regarding this matter will be specified.

4. The transmitter site proposed by Great Arizona Broadcasting Company will be located 1.08 miles from AM Station KRDS, Tolleson, Arizona. Because of the proximity of the proposed tower to KRDS, if Great Arizona Broadcasting Company is the successful applicant for Channel 51, the construction permit will be conditioned

to ensure that KRDS's radiation patterns will not be adversely affected.

5. Section 73.685(f) of the Commission's Rules requires an applicant proposing to use a directional antenna to include a tabulation of relative field pattern, oriented so that 0° corresponds to True North and tabulated at least ever 10° plus any minima or maxima. Marimar Communications Corporation (Marimar) and T.V. Broadcasters, Inc.[1] have not supplied this data. Accordingly, the applicants will each be required to submit an amendment with the appropriate information, to the presiding Administrative Law Judge and copies to the Chief, Television Branch and Chief Hearing Branch, Mass Media Bureau, within 20 days after this Order is released.

6. Section V–C, item 10(e) requires the applicant to specify the area and population within its proposed Grade B contour. Schulze-Wagner Partnership has not responded to item 10(e). Accordingly, Schulze-Wagner will be required to submit an amendment with its response to item 10(e), to the presiding Administrative Law Judge, within 20 days after this Order is released.

7. Schulze-Wagner has indicated that it believes its transmitter site will be available, but arrangements which would constitute reasonable assurance of the site's availability have not yet been completed. The applicant has not advised us that such arrangements have been finalized. Accordingly, an issue will be specified to determine whether Schulze-Wagner has a transmitter site available.

8. Carlos Jurado, vice-president, director and 15 percent stockholder of Lifestyle Broadcasting Corporation (Lifestyle), is currently employed by Meredith Corporation, the licensee of Station KPHO–TV, Phoenix, Arizona. Mr. Jurado's connection with Meredith may violate the Commission's cross-interest policy. However, we cannot make this determintion because we have no information regarding the nature of Mr. Jurado's position at KPHO–TV. Lifestyle, however, has stated that if it is the successful applicant for Channel 51, Mr. Jurado will terminate his relationship with Meredith Corporation. In light of Lifestyle's representation that Mr. Jurado will sever all connection will Meredith Corporation, rather than to specify a cross-interest issue, we shall condition any grant of a construction permit to Lifestyle upon the severance. Accordingly, if Lifestyle is the successful applicant, the construction permit shall be subject to the condition that, prior to the commencement of operation of the television station, the permittee shall certify to the Commission that Mr. Jurado has severed all connection with the licensee of KPHO–TV.

9. Ira Lavin, a limited partner of LI–COM Limited Partnership (LI–COM), is the honorary president of Camelback Cablevision, Inc. (CCI), PHoenix, Arizona. Mr. Lavin's position with the cable company may violate our cross-interest policy. However, LI–COM has stated that Mr. Lavin will terminate has position at CCI if LI–COM is the successful applicant for Channel 51. Accordingly, based on LI–COM's representation, if it is successful applicant, the construction permit shall be subject to the condition that, prior to the commencement of operation of the television station, the permittee shall certify to the Commission that Mr. Lavin has severed all connection with CCI.

10. Marimar did not certify its financial qualifications, but it did indicate that certification would be forthcoming. Marimar will be given 20 days from the release date of this Order to review its financial proposal in light of Commission requirements, to make any changes that may be necessary and, if appropriate, to submit a certification to the Administrative Law Judge in the manner called for in Section III, FCC Form 301, as to its financial qualifications. If Marimar cannot make the required certification, it shall so advise the Administrative Law Judge who shall then specify an appropriate issue. *Minority Broadcasters of East St. Louis, Inc.*, BC Docket No. 82–378 (released July 15, 1982).

11. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since these applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant would serve the public interest, convenience, and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

12. Accordingly, it is ordered, that pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine, with respect to Estrella Communications Limited Partnership, and Susan Cordova Kelly whether the tower height and location proposed by each would constitute a hazard to air navigation.

2. To determine, with respect to Schulze-Wagner Partnership, whether it has reasonable assurance of the availability of its proposed transmitter site.

3. To determine which of the proposals would, on a comparative basis, best serve the public interest.

4. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

13. It is further ordered, that the Federal Aviation Administration is made a party respondent to this proceeding with respect to issue 1.

14. It is further ordered, that, in the event of a grant of Great Arizona Broadcasting Company's application the construction permit shall be conditioned as follows:

Prior to construction of the tower authorized herein, permittee shall notify AM Station KRDS, Tolleson, Arizona, so that, if necessary, the AM station may determine operating power by the indirect method and request temporary authority from the Commission in Washington, D.C. to operate with parameters at variance in order to maintain monitoring point field strengths within authorized limits. Permittee shall be responsible for the installation and continued maintenance of detuning apparatus necessary to prevent adverse effects upon the radiation pattern of the AM station. Both prior to construction of the tower and subsequent to the installation of all appurtenances thereon, a partial proof of performance, as defined by § 73.154(a) of the Commission's Rules, shall be conducted to estabish that the AM array has not been adversely affected and, prior to or simultaneous with the filing of the application for license to cover this permit, the results submitted to the Commission.

15. It is further ordered, that Marimar Communications Corporation and T.V. Broadcasters, Inc. shall each submit an amendment providing the information required by § 73.685(f) of the Commission's Rules, to the presiding Administrative Law Judge and copies to the Chief, Television Branch and Chief, Hearing Branch, Mass Media Bureau, Within 20 days after the release date of this Order.

16. It is further ordered, that Schulze-Wagner Partnership shall submit an amendment which contains its response to Section V–C, item 10(e), FCC Form 301, to the presiding Administrative Law Judge, within 20 days after this Order is released.

17. It is further ordered, that, in the event of a grant of the application of Lifestyle Broadcasting Corporation, the

[1] T.V. Broadcasters, Inc.'s tabulation should reflect the use of mechanical beam tilt.

construction permit shall be conditioned as follows:

Prior to commencement of operation of the television station authorized herein, permittee shall certify to the Commission that Carlos Jurado has severed all connection with Meredith Corporation, the licensee of Station KPHO-TV, Phoenix, Arizona.

18. It is further ordered, that, in the event of a grant of the application of LI-COM Limited Partnership, the construction permit shall be conditioned as follows:

Prior to commencement of operation of the television station authorized herein, permittee shall certify to the Commission that Ira Lavin has severed all connection with Camelback Cablevision, Inc., Phoenix, Arizona.

19. It is further ordered, that Marimar Communications Corporation shall submit a financial certification in the form required by Section III, FCC Form 301, or advise the Administrative Law Judge that the certification cannot be made, as may be appropriate, within 20 days after this Order is released.

20. It is further ordered, that to avail themselves of the opportunity to be heard, the applicants and party respondent herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order.

21. It is further ordered, that the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 3.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

Roy J. Stewart,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 85-16298 Filed 7-8-85; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL HOME LOAN BANK BOARD

[No. 85-552]

Criminal Referral Reporting/ Recordkeeping Requirements

Date: July 2, 1985.

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice.

SUMMARY: The public is advised that the Federal Home Loan Bank Board has submitted a revised information collection request, entitled "Criminal Referral Reporting/Recordkeeping Requirements" (previously entitled "Criminal Activity", OMB No. 3068-0015), to the Office of Management and Budget for approval in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Comments: Comments on the information collection request are welcome and should be submitted within 15 days of publication of this notice in the **Federal Register**. Comments regarding the paperwork-burden aspects of the request should be directed to: Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, D.C. 20503, Attention: Desk Officer for the Federal Home Loan Bank Board.

The Board would appreciate commenters sending copies of their comments to the Board.

Requests for copies of the proposed information collection request and supporting documentation are obtainable at the Board address given below: Director, Information Services Section, Office of Secretariat, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20552, Phone: 202-377-6933.

FOR FURTHER INFORMATION CONTACT: John Downing, Office of General Counsel, Phone: 202-377-6434.

By the Federal Home Loan Bank Board.

Jeff Sconyers,

Secretary.

[FR Doc. 85-16258 Filed 7-8-85; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL RESERVE SYSTEM

One Valley Bancorp of West Virginia, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than July 29, 1985.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *One Valley Bancorp of West Virginia, Inc.*, Charleston, West Virginia; to acquire 100 percent of the voting shares of Seneca BancShares, Inc., Fairlea, West Virginia, thereby indirectly acquiring Seneca National Bank, Fairlea, West Virginia.

B. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *P.T.C. Bancorp.*, Brookville, Indiana; to acquire 100 percent of the voting shares of The First National Bank of Vevay, Vevay, Indiana.

2. *Republic Bancorp, Inc.*, Flint, Michigan; to become a bank holding company by acquiring 80 percent of the voting shares of Republic Bank, Flint, Michigan.

C. **Federal Reserve Bank of Minneapolis** (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *West Concord Bancshares, Inc.*, West Concord, Minnesota; to become a bank holding company by acquiring 99.6 percent of the voting shares of Farmers State Bank of West Concord, West Concord, Minnesota.

Board of Governors of the Federal Reserve System, July 2, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-16222 Filed 7-8-85; 8:45 am]

BILLING CODE 6210-01-M

Ruston Bancshares, Inc.; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C.

1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in a dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 26, 1985.

A. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Ruston Bancshares, Inc.*, Ruston, Louisiana; to engage directly in leasing personal and real property.

Board of Governors of the Federal Reserve System, July 2, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-16223 Filed 7-8-85; 8:45 am]

BILLING CODE 6210-01-M

[Docket No. R-0548]

Proposed Bank Holding Company Reporting Requirements

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Agency Forms Under Review.

Background

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act of 1980, as per 5 CFR 1320.9, "to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320.9." Board-approved collections of information will be incorporated into the official OMB inventory of currently approved collections of information. A copy of the SF 83 and supporting statement and the approved collection of information instrument(s) will be placed into OMB's public docket files. The following proposal, which is being handled under this delegated authority and in accordance with 5 CFR 1320.12, has received initial Board approval and is hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority.

DATES: Comments on the revisions to the FR Y-9 and the FR 2352 must be received by August 7, 1985. The Board will receive comments on the revisions to the FR Y-6, including the nonbank financial data and the Quarterly Report of Bank Holding Company Changes, and the new Combined Financial Statement of Nonbank Subsidiaries for an additional 30 days, until September 5, 1985.

ADDRESSES: Comments should be sent to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, D.C. 20551, or delivered to Room B-2223 between 8:45 a.m. and 5:15 p.m., Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, D.C. 20551. Comments should reference both the Docket No. R-0548 and the OMB number of the information collection. Comments received may be inspected in room B-1122 between 8:45 a.m and 5:15 p.m., except as provided in section 261.6(a) of the Board's Rules Regarding Availability of Information, 12 CFR 261.6(a).

A copy of the comments may also be submitted to the OMB Desk Officer for the Board: Robert Neal, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: Stephen Lovette, Supervisory Financial Analyst, Division of Banking Supervision and Regulation (202/452-3622), Louella Moreno, Supervisory Financial Analyst, Division of Banking Supervision and Regulation (202/452-2723), or Arleen Lustig, Senior Financial Analyst, Division of Banking Supervision and Regulation (202/452-2987).

A copy of the proposed form, the request for clearance (SF83), supporting statement, transmittal letter, and other documents that will be placed into OMB's public docket files once approved may be requested from the Federal Reserve Board Clearance Officer—Cynthia Glassman—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 (202-452-3829).

Proposal To Approve Under OMB Delegated Authority the Extension With Revision of the Following Reports:

1. Report title: Bank Holding Company Financial Supplement.
Agency form number: FR Y-9
OMB Docket number: 7100-0128
Frequency: quarterly
Reporters: Bank Holding Companies
Small businesses are not affected.

This information collection is mandatory (12 U.S.C. 1844) and is not given confidential treatment.

2. Report title: Banking Holding Company Financial Statements.
Agency form number: FR 2352
OMB Docket number: 7100-0210
Frequency: semiannually
Reporters: Bank Holding Companies
Small businesses are affected.

This information collection is mandatory (12 U.S.C. 1844) and is not given confidential treatment.

3. Report title: Annual Report of Bank Holding Companies.
Agency form number: FR Y-6
OMB Docket number: 7100-0124
Frequency: quarterly, annually
Reporters: Bank Holding Companies
Small businesses are affected.

This information collection is mandatory (12 U.S.C. 1844) and is not given confidential treatment.

General description of reports: The Board of Governors of the Federal Reserve System is submitting for public comment a proposed revision of the reporting requirements for bank holding companies. The existing requirements are contained in the Annual Report of Bank Holding Companies, FR Y-6, (OMB No. 7100-0124), the Bank Holding Company Financial Supplement, FR Y-9,

(OMB No. 7100–0128), and the Bank Holding Company Financial Statements, FR 2352 (OMB No. 7100–0210). The reports are authorized by section 5(c) of the Bank Holding Company Act of 1956 (12 U.S.C. 1844), and section 225.5(b) of Regulation Y (12 CFR 225.5(b)). The proposed revisions are designed to obtain data crucial for supervisory purposes, to provide the needed information on a more frequent basis and to simplify the reporting structure contained in the existing holding company reports.

SUPPLEMENTARY INFORMATION: Under the Bank Holding Company Act of 1956, as amended, the Federal Reserve is responsible for the supervision and regulation of all bank holding companies. In Regulation Y, the Board has stated that it looks to the holding company to provide financial and managerial strength to its subsidiary bank(s). Bank holding companies are currently required by the Board to submit the Bank Holding Company Financial Supplement (FR Y–9) and the Annual Report for Domestic Bank Holding Companies (FR Y–6) pursuant to Section 5(c) of the Bank Holding Company Act and § 225.5(b) of Regulation Y.

The FR Y–6 is the primary source for much of the financial and structural data on individual bank holding companies, their bank and nonbank subsidiaries, and other regulated investments. The FR Y–6 consists of a number of separate parts satisfying different requirements for financial information on various segments of the bank holding company organization and for other supervisory and regulatory information. The parts of the FR Y–6 include: free-form financial statements for the consolidated company and parent only (Form 10–K filed with the Securities and Exchange Commission satisfies this requirement); free-form financial statements for nonbank subsidiaries; fixed-form data on the structure of the holding companies' investments in bank and nonbank subsidiaries; fixed-form data on selected financial items of the nonbank subsidiaries; and the reporting of the names of officers, directors, and shareholders, and their percentage ownership of the holding company and its subsidiaries. All bank holding companies are required to submit the FR Y–6 report annually. This information assists the Federal Reserve in monitoring the holding company's operations, ensuring that the operations are conducted in a safe and sound manner that protects the depositors of the subsidiary bank(s), and determining holding company compliance with the prohibitions of the Bank Holding Company Act and Regulation Y (12 CFR Part 225).

The FR Y–9 is the primary source of systematic and consistent financial information both on the consolidated holding company and on the parent only. This information is critical for the Federal Reserve System's bank holding company surveillance program which involves the on-going monitoring of the financial condition of holding companies between on-site inspections. The FR Y–9 data provide standardized information for the purpose of generating periodic bank holding company surveillance screens and Bank Holding Company Performance Reports which are similar to the Uniform Bank Performance Reports for insured commercial banks prepared by the Federal Financial Institutions Examination Council. Bank Holding Company Performance Reports are available to holding companies and should assist them in comparing certain aspects of their performance and operations with those of their peers. Bank Holding Company Performance Reports are also available to the public upon request.

Historically, the FR Y–9 report has provided financial information on the consolidated holding company and the parent only similar to that obtained from the Reports of Condition and Income filed by commercial banks. Currently, holding companies with assets of less than $50 million are not required to file the FR Y–9; those with assets between $50 and $100 million file annually the parent only statement; those with assets of between $100 and $300 million file annually both the parent only and the consolidated statements; and those with assets over $300 million file the parent only and the consolidated statements on a semiannual basis.

The financial information from the FR Y–9, as well as ratios developed from it, is used in the detection of emerging financial problems, in the analysis of a bank holding company's financial condition and performance, in the performance of pre-inspection analyses, and in the evaluation of bank holding company mergers and acquisitions.

In addition to the current regular collection of the FR Y–9 data, the Board, on April 26, 1985, approved two bank holding company reports for a onetime collection of information as of June 30, 1985. One of these reports is a supplemental "slip-sheet" to the existing consolidated statements in the FR Y–9 to obtain information required to help assess capital adequacy and provide data on past due, nonaccrual, and renegotiated loans and leases. The other, FR 2352 (OMB No. 7100–0210), Bank Holding Company Financial Statements, Collects parent company only data from bank holding companies that have total consolidated assets of less than $150 million. Previously, these data have not been collected on the FR Y–9 from bank holding companies with less than $50 million in assets.

Proposal

Revision of the FR Y–9

Under the proposal issued for comment by the Board, bank holding companies with total consolidated assets of $150 million or more would file, on a quarterly basis, revised fixed-format reports, presently entitled the FR Y–9, on both a consolidated and parent company only basis. All multibank holding companies (i.e., those owning or controlling more than one bank) regardless of size would also file the FR Y–9 quarterly on a consolidated and parent company only basis. The FR Y–9 would be required to be completed as of the end of March, June, September, and December and the reports would be submitted to the appropriate Federal Reserve Bank within 45 days after the date of the report. It is proposed that the FR Y–9 reports be implemented beginning with the December 31, 1985 report date.

Under the present reporting requirements, three types of bank holding companies are exempted from filing the FR Y–9. These are bank holding companies that are subsidiaries of another bank holding company; bank holding companies which have been granted a hardship exemption by the Board under section 4(d) of the Bank Holding Company Act; and foreign banking organizations as defined by § 211.23(b) of Regulation K, (12 CFR 211.23(b)), for example, foreign banks that own U.S. banks.

Under the proposal, the Board would require all bank holding companies that are subsidiaries of another bank holding company to file the *parent only portion* of the FR Y–9 or the FR 2352, as appropriate. This is proposed because the number of these companies is increasing, and many of these so-called "multitiered" bank holding companies often have significant debt at the various holding company levels or tiers. In addition, many bank holding companies that have made interstate acquisitions have maintained the acquired bank holding company (and its liabilities) as a separate legal entity. Also, in connection with a change in ownership of small bank holding companies, new hol·ling companies

often acquire an existing holding company. The bank holding company that acquires the existing institution often maintains this institution as a separate corporate entity. These transactions can result in acquisition debt outstanding in both the acquiring and acquired holding company. The parent company only statement for all bank holding companies has been modified to obtain specific memoranda items from these "tiered" companies.

The Board proposes that one-bank holding companies with total consolidated assets of less than $150 million would file a fixed-format abbreviated parent company only balance sheet and income statement. This report would use the same report form, FR 2352, as that approved for June 30, 1985 with the exception of the addition of certain memoranda items applicable only to tiered bank holding companies. This report would be required on a *semiannual* basis as of the end of June and December, and would be filed with the appropriate Federal Reserve Bank within 45 days after the date of the report. Bank holding companies with less than $150 million in consolidated assets that own more than one bank would be required, under the proposal, to file quarterly the more comprehensive FR Y–9 report that is filed by companies with assets in excess of $150 million. This latter report contains both consolidated and parent company only financial statements.

In summary, the proposal would revise the existing reporting requirements for the FR Y–9 and the FR 2352 in the following ways:

(1) All bank holding companies, regardless of size, with two or more banks would file quarterly a FR Y–9 including both a consolidated statement and a parent only statement.

(2) One-bank bank holding companies with total assets under $50 million would begin reporting semiannually on an abbreviated parent only basis (the same as the report filed for June 30, 1985).

(3) One-bank bank holding companies with total assets between $50 and $100 million would continue reporting on a parent only basis but semiannually, rather than annually, and on an abbreviated form as compared to their current more extensive form.

(4) One-bank bank holding companies with total assets between $100 and $150 million would continue filing on a parent only basis, but semiannually, rather than annually, and on an abbreviated basis as compared to their current more extensive form. These bank holding companies would be relieved from filing the consolidated statements.

(5) For tiered bank holding companies, each bank holding company that is a subsidiary of another would be required to submit the appropriate *parent company only* statement, either the FR Y–9 or the FR 2352, with additional memoranda items. The present requirement for submission of consolidated data by *only* the *top* tier would be unchanged.

(6) For bank holding companies with total consolidated assets of $150 million or more, the consolidated reporting requirements would be revised to incorporate new information (some of which was collected in June on the "slip sheet" to the FR Y–9) on past due nonaccrual and renegotiated loans, on the components of primary and secondary capital, on off-balance sheet activities, on customer domicile (i.e., foreign or U.S.), and on average balances. The reporting frequency would also be increased to quarterly under the proposal. The reporting requirements for holding companies in excess of $150 million in consolidated assets would also be applied to *multibank* holding companies of all sizes. Currently, bank holding companies with total assets over $300 million file both consolidated and parent only statements semiannually, while bank holding companies with total consolidated assets of between $100 and $300 million file on an annual basis. In addition to these changes, both the reporting format and the instructions for the FR Y–9 consolidated statements would be revised to conform, in general, to those of the new commercial bank call report. In particular, it should be noted that, while bank holding companies are generally required to submit financial statements to the Board in accordance with generally accepted accounting principles (GAAP), in a few specific instances the required reporting treatment for certain transactions would differ from GAAP.

Key points and issues relating to these revised requirements are discussed in more detail in the following sections.

New Data From Large Bank Holding Companies

The revised FR Y–9 consolidated report would require new data from banking holding companies that have consolidated assets of $150 million or more and from all multibank holding companies. These requirements include information on primary and secondary capital; past due, nonaccrual and renegotiated loans; off-balance sheet activities; average balances for certain account categories; interest sensitivity of certain assets and liabilities; certain foreign activities broken down primarily by the domicile of the borrower; and the reconciliation of equity capital accounts. Some of these data are being collected on a slip-sheet to the FR Y–9 for June. All of the new data are consistent with information that is being collected for banks. The proposal does not, however, attempt to collect for holding companies all of the information and detail required of commercial banks such as, for example, Schedule RC–J of the bank call report on interest rate sensitivity.

Information on Capital

The added data on primary and secondary capital, and the information relating to mandatory convertible securities, are essential for permitting the Federal Reserve to monitor the compliance of bank holding companies with its Capital Adequacy Guidelines program set forth in Appendix A to Regulation Y (12 CFR Part 225). The provisions, structure and content of the Board's guidelines program establish the content and format of this information requirement. Recent revisions to the Board's capital guidelines program have considerably reduced the amount of information that would have otherwise have been required in connection with secondary capital components.

Nonperforming Loans

The proposed data on so-called nonperforming loans by type of loan are requested on a consolidated basis. This information is already being collected for banks and is an essential element in determining the condition of the consolidated bank holding company. Collection of this information from bank holding companies will reduce the likelihood that the volume of past due, nonaccrual, and negotiated loans in holding company affiliates other than the bank will escape supervisory review and evaluation.

Off-Balance Sheet Items

There has been an increasing tendency among some bank holding companies, as well as banks, to remove risk-taking activities off the balance sheet. For this reason, the Board is requesting from bank holding companies data on off-balance sheet items that are identical to what is currently being reported by commercial banks. These data are necessary to monitor the consolidated holding company's off-balance sheet activities which can have a significant effect on the organization's performance and overall safety and soundness. While the Board believes information on off-balance sheet activities is critical, it requests specific comments on this aspect of the proposal;

in particular, on how best to obtain adequate and timely information on and assess the risks of off-balance sheet activities.

Average Balances

The proposal includes the requirement of the submission of certain average balances. These average balance data would be used in the calculation of financial ratios for the purpose of measuring yields on assets and investments and the cost of liabilities. Such ratios are essential elements in the evaluation of the operations of bank holding companies. The calculation of these ratios based solely on period-end balances could be distorted due to seasonality, normal growth or shrinkage, or temporary adjustments of "window dressing" of financial statements. By utilizing average balances, financial ratios will be significantly more accurate and analytically meaningful. The Securities and Exchange Commission, under Guide 3, requires bank holding companies to submit average balance sheet data in significant detail, and the commercial bank call report requires average balance sheet data from banks. Only a small number of averages are included in the proposal but there is some interest in expanding the list. With respect to the request for average balance sheet data from bank holding companies, the Board requests comments on the burden of providing the averages, particularly from bank holding companies that are not registered with the Securities and Exchange Commission and those with significant foreign and nonbanking activities.

Information on Customer Domicile (Foreign vs. Domestic)

The revised FR Y–9 would require certain aggregate customer balance information to be broken down by foreign versus domestic domicile in order to determine the extent of foreign activity on a consolidated basis. Because some banking organizations are shifting some of their foreign activities from the bank to the holding company and because of the additional need to measure aggregate foreign exposure of the holding company, it is necessary to collect at least a minimum amount of consolidated and nonbank information on foreign-domiciled customers. The foreign information that is being requested is generally consistent with the domicile information requested in the call report for banks with foreign operations and with SEC reporting requirements.

Information on Interest Sensitivity

The proposal also incorporates requirements for certain limited data on the maturity of variable rate and fixed rate assets and liabilities in order to assess the interest rate sensitivity of the bank holding company. The proposed information of this type is not as detailed as that required from commercial banks. The Board requests comment on this aspect of the proposal.

Deposit Detail

The proposal seeks to obtain deposit liability data from all of the bank holding company's depository subsidiaries. As the types of deposit accounts that these institutions can offer are changing, the Board seeks specific comments on this aspect of the proposal.

Nonbank Activities

The proposed consolidated balance sheet and income statements do not require separate reporting of certain specific asset or liability accounts associated with various types of nonbanking activities, such as account receivables and payable customers of discount brokerage services and other activities that have not been traditionally associated with commercial banking. However, as described below, information on nonbank activities is proposed for separate reports. The Board requests comment on whether any specific nonbank detail should be incorporated into the consolidated financial report of bank holding companies or whether it should be collected in an alternative form.

Departures From GAAP

In general, it is the policy of the Federal Reserve in specifying the details of instructions for reporting requirements to follow generally accepted accounting principles (GAAP) whenever possible and provided there do not exist specific regualtory needs for particular pieces of information on another basis. However, because of the special supervisory, regulatory, and economic policy needs served by these bank holding company reports, the Board is proposing that the reporting treatment to be specified in the instructions depart from GAAP with respect to a very limited number of items. Among such items are the sale of loans with recourse, in-substance defeasance, and risk participations in bankers acceptance.

The Board believes that the manner in which these particular items are reported in the FR Y–9 should be consistent with the risks associated with the underlying transactions and with the essential regulatory and supervisory purposes to be served by the reports. In particular, the reporting treatment of these transactions, and the effect of their treatment on total assets, will have significant implications for the calculations of capital ratios and for monitoring the compliance of bank holding companies with the Federal Reserve's Capital Adequacy Guidelines. The Board believes that these considerations require some specific limited departures from GAAP—departures that parallel the reporting treatment specified by the bank call reports—in order to ensure that the financial statements submitted to the Federal Reserve properly reflect the risk characteristics inherent in a bank holding company's operations. In addition, certain departures from GAAP that some bank holding company submissions to SEC are incorporating (in particular, the netting of cash items in process of collection or of deposit "float") would be explicitly prohibited in the FR Y–9 report.

The changes proposed in the FR Y–9 will conform accounts of the bank holding company's consolidated financial statements and their definitions to those of the consolidated reports (call reports) filed by the subsidiary commercial banks with the bank supervisory agencies. Making the reporting requirements for the consolidated FR Y–9 and for subsidiary banks consistent in this way will obviate the need for holding companies to report subsidiary banks' data on one basis in the comercial bank call report and on another basis in the consolidated FR Y–9.

Abbreviated Parent Company Only Statement for Small Bank Holding Companies

Numerous developments over the last several years have combined to create a need for periodic standardized data on small bank holding companies (i.e., those under $50 million in total consolidated assets), which heretofore have been exempt from filing the FR Y–9 type information (except for the one-time collection of data in June 1985 on Form FR 2352). Many of these holding companies are characterized by high levels of debt that have had, in numerous instances, a significant impact on the condition of their subsidiary banks. The leverage in these companies results, in part, from bank acquisition debt assumed in the formation of the bank holding company. This leverage and the resulting debt service requirements, in combination with the

deterioration in the asset quality and earnings of some bank subsidiaries, underscore the necessity of obtaining additional information from small bank holding companies.

The Board believes that the current absence of standardized data on the financial condition of these companies creates an information gap in the conduct of its supervisory responsibilities. Similarly, the other federal banking regulators have expressed their need for minimal standardized information on these small institutions. The proposed establishment of a minimum level of standardized reporting requirements for bank holding companies with consolidated assets below $50 million would greatly enhance the effectiveness of the Federal Reserve's bank holding company supervision.

The information proposed for semiannual collection is identical to that to be reported for June (FR 2352) except for the addition of certain items to be required of bank holding companies in tiered holding company structures.

Revision to the Existing Requirements Currently Contained in the FR Y-6

The current FR Y-6 is filed annually by most bank holding companies.[1] The FR Y-6 encompasses a combination of many different requirements taking different forms, requiring different processing procedures, and satisfying differing supervisory and regulatory needs. The current FR F-6 requires bank holding companies to submit:

(1) Free-form consolidated and parent only financial statements for the bank holding company. (The required submission in the FR Y-6 of a copy of Form 10-K prepared for the Securities and Exchange Commission satisfies this requirement.) One-bank holding companies that have less than $100 million in assets do not have to submit the consolidated statements.

(2) Free-form financial statements for nonbank subsidiaries. (These statements may consolidate indirect subsidiaries.)

(3) Fixed-loan structural and financial data on the reporting company's investments in bank and nonbank subsidiaries and other regulated investments (on Schedules A, B, C, and D of the current FR Y-6).

(4) The names and percentage ownership of the shareholders, officers, and directors of the bank holding company and the nonbank subsidiaries; and the outside business interests of these individuals.

(5) Details on insider lending by the bank holding company.

Finally under the current requirements, bank holding companies that have consolidated banking assets of $100 million or more are required to have their consolidated financial statements, as submitted in response to item (1) above in the FR Y-6, certified by an independent public accountant.

The revisions to the FR Y-6 proposed by the Board are designed to rationalize the reporting and processing of this information by breaking the combined report down into its separate components. In particular, the proposed revisions to the requirements contained in the current FR Y-6 would divide the existing report into separate reports. These revisions simplify, reduce the burden associated with, and speed the collection of fixed form financial information on nonbank subsidiaries and of data on holding company structure that are presently collected in the FR Y-6.

It is proposed to make the following changes in the current FR Y-6:

(1) Separate into another report, for processing purposes, the *standardized* nonbank financial and structure data from the nonstandardized FR Y-6 information. Under the proposal, bank holding companies would continue to submit selected financial information on each individual nonbank subsidiary that is currently collected on page 3 of Schedule A in the FR Y-6. However, these data would be submitted as a separate report under the proposal. The fixed-form selected financial data on nonbanking subsidiaries would be collected annually as of December 31 and would be submitted to the appropriate Reserve Bank within 45 days after the date of the report. (In addition, the Board proposes to collect combined financial statements on aggregate nonbanking subsidiaries from certain bank holding companies. This proposal is discussed below.)

(2) The current reporting of *complete* structure information for all of the bank holding companies's subsidiaries and other regulated investments each year would be replaced by a separate report to be filed only for those quarterly periods in which the holding company acquired sold, or liquidated its investments or commenced or terminated the conduct of a nonbank activity. Under the proposal, therefore, bank holding companies would submit data quarterly on only those changes in investments or ownership that represent a modification of structure information previously submitted to the Federal Reserve rather than, as at present, reporting the entire holding company structure annually. This information would be collected on a new Bank Holding Company Quarterly Report of Changes. As indicated, this report on changes in the bank holding company's investments and activities would be event-generated—bank holding companies would submit the report to the appropriate Federal Reserve Bank within 30 days after the end of any quarter in which a change occurred. This would significantly reduce the amount of detailed information that is required of all bank holding companies annually in the FR Y-6 concerning the structure of the holding company and its investments in subsidiaries, both bank and nonbank. This change would also represent a significant reduction in burden for those holding companies that own or control a large number of nonbank subsidiaries and/or investments.

(3) The proposed revision would also raise the asset threshold above which holding companies are required by the FR Y-6 to submit financial statements that are certified by an independent public accountant. In addition, the assets criteria would be changed from total banking assets of the subsidiary banks to total consolidated bank holding company assets. Currently, holding companies with consolidated *banking* assets over $100 million must comply with this certification requirement. Under the proposal, however, all bank holding companies having total *bank holding company* consolidated assets exceeding *$150 million* would be required to submit certified financial statements. This revision would eliminate the certification requirement and reduce the burden on bank holding companies that have consolidated assets of between $100 and $150 million. Currently, companies having banking assets of less than $100 million are not required to submit certified statements and, under the proposal, these small companies would continue to be exempted from the certification requirement.

The FR Y-6 as modified would continue to be collected annually as of the end of the bank holding company's fiscal year. This report would be submitted to the appropriate Reserve Bank within 3 months after the date of the report.

Combined Nonbank Subsidiary Financial Statements

The Federal Reserve, as the primary supervisor of bank holding companies

[1] Certain foreign-domiciled bank holding companies and foreign banking organizations that are "qualified foreign banking organization," as defined in § 211.23(b) of Regulation K, file the Annual Report of Foreign Banking Organization, FR Y-7, and the Confidential Report of Operations, Form FR 2068, instead of the FR Y-6.

and their nonbanking subsidiaries, has important responsibilities to monitor the risks of nonbanking activities and the potential effect of new nonbanking activities on the safety and soundness of the financial system. The Board has long held that the condition of bank subsidiaries cannot be totally insulated from the fate of their nonbank affiliates. Moreover, experience has shown that significant funding, earnings or asset problems in the nonbank subsidiaries can adversely affect the consolidated holding company and the affiliated bank(s). Consequently, a principal focus of the holding company supervisory effort is to determine the volume, nature and condition of nonbank activities and their potential impact on affiliated commercial banks. Nonbank activities have grown rapidly over the years, and as banking organizations become involved in a broader range of activities, it is essential that sufficient information be collected to monitor the potential impact of the nonbank activities on the affiliated banks.

In light of these considerations, the Board is proposing to collect from certain bank holding companies a new report in which the bank holding company would report financial information for its nonbank subsidiaries on a combined basis. At the present time, the Board collects a few items on a fixed-format basis from each individual nonbank subsidiary of bank holding companies in the FR Y–6. As discussed in the previous section, the Board proposes to continue to collect this information, although in a report separate from the FR Y–6.

The proposed new nonbank information is needed in order to monitor more effectively the risk assets and profitability of the nonbank subsidiaries and the capitalization and leverage of the nonbank subsidiaries in comparison to industry norms, prudential guidelines or regulatory standards. Data derived exclusively from consolidated and parent holding company financial statements are not sufficient to monitor the nonbank affiliates since the consolidated statements do not address the nonbank affiliates explictly, and the relative size of the banking assets could obscure the operating results of nonbank subsidiaries in the consolidated statements until the problems of the nonbank activities have reached a critical level. The proposed additional information on nonbank affiliates would assist the Federal Reserve in identifying early any problems in the nonbank area before the problems are so large as to have significantly adverse affect on the consolidated organization and the bank affiliate(s). The proposal issued for public comment by the Board, therefore, seeks to collect essential and more timely data on combined nonbank activities to monitor potential risks and their effects on the consolidated holding company.

The Board is proposing to collect quarterly financial data on combined nonbank subsidiaries from bank holding companies with total consolidated assets of $1 billion or more and from those holding companies between $150 million and $1 billion that have material nonbanking activities. All smaller bank holding companies (i.e., those with total consolidated assets of less than $150 million) would be exempted from reporting such information.

The proposal issued for comment by the Board would collect the following financial information on nonbank subsidiaries from bank holding companies:

(1) A quarterly report on the aggregation of nonbank activities within the bank holding company. This report, entitled the Combined Financial Statement of Nonbank Subsidiaries of Bank Holding Companies, would be submitted: (a) by bank holding companies with total consolidated assets of $1 billion or more; (b) by bank holding companies with total consolidated assets of between $150 million and $1 billion that meet one or more of the following conditions: (i) The assets of the holding company's nonbank subsidiaries make up 5 percent or more of total consolidated assets, (ii) net income of the holding company's nonbank subsidiaries make up 5 percent or more of the holding company's total consolidated net income, (iii) the holding company's investments in and/or loans and advances to nonbank subsidiaries exceed 5 percent of the holding company's total consolidated equity capital. The 5 percent materiality criteria are proposed as a level at which the nonbank subsidiaries' operations could have a significant impact on the consolidated holding company's operations.

(2) An annual supplement to the quarterly report, which would break down the aggregate nonbank information by type of nonbank activity. This report would be submitted each December by the same bank holding companies submitting the quarterly report discussed in the previous paragraph. It is proposed that the detail by type of nonbank activity be reported on a functional basis, where the holding company would be required to allocate, for reporting purposes, the nonbank assets, liabilities, income and expenses by certain specified lines of business (e.g., securities brokerage, underwriting and dealing in government obligations and money market instruments, or futures commission merchant) regardless of the corporate structure of the nonbank activities. Alternatively, the detail could be based on the combining of individual nonbank companies classified by the primary business activity of the legal entity. The Board specifically requests public comment on the relative burdens imposed by each of these approaches.

Taken together, the proposed changes in the current FR Y–6 and the FR Y–9 report systems are designed to:

(1) Simplify and reduce, where appropriate, the burden associated with completing the FR Y–6 holding company annual report;

(2) make the FR Y–9 holding company reports conform to the line items of the revised Report of Condition and Income filed by commercial banks, and incorporate the information on capital and nonperforming loans requested on the June slip-sheet into the revised FR Y–9 report;

(3) obtain from bank holding companies that have consolidated assets of $150 million or more certain new information—including data on average balances, customer domicile, off-balance sheet activity, and interest sensitivity—that is essential for supervisory purposes and that has recently been required of commercial banks by the Federal Financial Institutions Examination Council;

(4) increase to quarterly the frequency of reporting on the fixed-format FR Y–9 financial statements for bank holding companies with consolidated assets over $150 million;

(5) institute the semiannual collection of the FR 2352 report for bank holding companies that have total consolidated assets of less than $150 million;

(6) obtain adequate nonbank data from holding companies; and

(7) increase the asset cut-off pertaining to the requirement for the submission of certified financial statements by bank holding companies to $150 million in consolidated holding company assets from $100 million in total banking assets.

Implementation Dates

The Board believes that the implementation of the complete proposal is crucial to strengthening the supervision and regulation of bank holding companies. However, the revisions to the FR Y–9 and the implementation of the FR 2352 on a

regular basis have the highest priority and are proposed for implementation as of December 1985. The simplification of the FR Y–6 would also be implemented for the December 1985 report. The remaining portions of the proposal—the new quarterly structure report and the new combined nonbank financial reports—would be implemented for reporting as of March 1986. Since this latter report constitutes a new reporting requirement, the later implmentation date is intended to provide greater lead time to prospective filers and to avoid undue burden for the December reporting period.

Commenters are asked to address not only the general characteristics of the proposed reports, but also the specific items requested, the treatment of the items, and any reasonable alternatives for obtaining the information in a less burdensome fashion.

Other Issues

In addition, the Board requests comments on the treatment of the reports with respect to requests for confidentiality. Under existing procedures, all the information in the FR Y–6 and the FR Y–9 submitted to the Board is available to the public on request unless the bank holding company has requested confidential treatment and has demonstrated to the Board that disclosure of certain commercial or financial information would likely result in substantial harm to its competitive position or to the competitive position of its subsidiaries, or that disclosure of submitted information is of a personal nature that would result in a clearly unwarranted invasion of personal privacy. The Board has under consideration a proposal to make available to the public, upon request, all submissions of the FR Y–9 *consolidated* statements. The Board would propose to continue the current procedure with respect to the confidentiality of the parent company only and the nonbank financial statements.

The Board also seeks comments on a proposed new requirement to have three directors of the bank holding company attest to the correctness of the proposed reports as submitted to the Board. Currently, the reports require only the signature of a single official of the bank holding company. The Board believes that the proposed new requirement is consistent with the responsibilities of the directors to ensure that supervisory reports are accurate and is consistent with the responsibilities of the directors to be fully informed of the company's financial condition.

Regulatory Flexibility Act

The Board certifies that the proposed revision of the FR Y–6 reporting requirements is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The proposed revision of the FR Y–9 reporting requirements, including the FR 2352, will require small bank holding companies, those with assets of less than $50 million, to provide certain parent company only information on a semiannual basis that was not previously required to be provided. The information that would be collected in the FR Y–9 is essential for the detection of emerging financial problems, the analysis of a bank holding company's financial condition and performance, the performance of pre-inspection analyses and the evaluation of bank holding company mergers and acquisitions. The imposition of these new standardized requirements is essential for the Board to supervise adequately the safety and soundness of small bank holding companies as required by the Bank Holding Company Act.

Board of Governors of the Federal Reserve System, July 3, 1985.

William W. Wiles,

Secretary of the Board.

[FR Doc. 85–16309 Filed 7–8–85; 8:45 am]

BILLING CODE 6210–01–M

GENERAL SERVICES ADMINISTRATION

Procedures for Ordering FY 1986 Updates to the Looseleaf Edition of the Federal Information Resources Management Regulation (FIRMR)

AGENCY: Office of Information Resources Management, GSA.

ACTION: Notice of procedures for Federal agencies/departments to order FY 1986 updates to the looseleaf edition of the FIRMR.

SUMMARY: This notice is to advise Federal agencies/departments to submit their FY 1986 copy requirements for the looseleaf edition of the FIRMR to the Government Printing Office (GPO). Individual agency offices are responsible for making their requirements known to their agency GPO Liaison Officers. Agency GPO Liaison Officers are responsible for submitting requirements to GPO through their Printing and Publishing Official. Agencies failing to submit orders will no longer receive FIRMR materials issued in FY 1986.

DATES: Applicable Dates: The looseleaf edition of the FIRMR was distributed to agencies by GPO in March of this year, based on agency-established copy requirements for FY 1985. Agencies must now submit their FY 1986 FIRMR copy requirements to GPO by August 15, 1985.

FOR FURTHER INFORMATION CONTACT: Carolyn A. Thomas, Policy Branch (KMPP), Office of Information Resources Management, telephone (202) 566–0194 or, FTS, 566–0194.

SUPPLEMENTARY INFORMATION: (1) The Federal Information Resources Management Regulation (FIRMR) established on April 1, 1984, is located in the Code of Federal Regulation at Title 41, Chapter 201. It provides Governmentwide regulations on the management, acquisition, and use of information resources (including automatic data processing, office automation, records management, and telecommunications).

(2) The basic looseleaf text of the FIRMR was distributed to agencies by the GPO in March of this year, based on agency-established copy requirements for FY 1985. GPO now requires agencies to submit their FY 1986 FIRMR copy requirements by August 15, 1985.

(3) Agency GPO Liaison Officers responsible for managing FIRMR distribution are being reminded to consolidate their agency's FY 1986 FIRMR copy requirements and make those requirements known to GPO through their agency Printing and Publication Official. In GPO Circular Number 201, dated April 25, 1985, GPO advised Federal Printing and Publication Officials to submit their agencies' FY 1986 copy requirements for all open requisitions (including the FIRMR) by June 21, 1985. However, GPO will continue to accept FY 1986 FIRMR copy requirements until August 15, 1985.

(4) FIRMR materials issued in FY 1986 will consist of updates to the basic looseleaf text only. The basic looseleaf text will not be reprinted for distribution in FY 1986. Federal employees unable to obtain the basic looseleaf text through their agency GPO Liaison Officer may subscribe to the FIRMR directly from GPO by following the procedures in paragraph six below.

(5) FIRMR updates in FY 1985 will continue to be issued under Transmittal Circulars (TC's) which will include amendments, temporary regulations, and bulletins and other informational guides. All FY 1986 production costs will be prorated to participating agencies by GPO. Based on estimated FY 1985 FIRMR costs of $20.00 to $25.00, FY 1986

costs are expected to be between $10.00 and $12.00 per user.

(6) Private sector companies, associations, businesses, and other interested parties wishing to receive the basic looseleaf text and all updates may place individual subcription orders directly with GPO by writing or calling, Superintendent of Documents, Government Printing Office, Washington, D.C. 20405, telephone: (202) 783-3238. The price for each subscription order is $66.00 domestic and $82.50 foreign. (GPO requires payment in advance unless charged to MasterCard, Visa, or GPO charge account.) Individuals already having a FIRMR subscription directly with GPO will continue to receive FIRMR updates in FY 1986 and are not required to reorder at this time.

Dated: June 28, 1985.

Larry L. Jackson,

Director, Policy and Regulations Division.

[FR Doc. 85-16325 Filed 7-8-85; 8:45 am]

BILLING CODE 6820-25-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 85F-0234]

Angus Chemical Co.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the Angus Chemical Co. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of 2-amino-2-methyl-1-propanol as a dispersing agent in pigment suspensions to be applied as coating to paper and paperboard products intended for food-contact use with aqueous foods.

FOR FURTHER INFORMATION CONTACT: Mary J. Stephens, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5740.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 5B3851) has been filed by the Angus Chemical Co., 2211 Sanders Rd., Northbrook, IL 60062, proposing that § 176.170 *Components of paper and paperboard in contact with aqueous and fatty foods* (21 CFR 176.170) be amended to provide for the safe use of 2-amino-2-methyl-1-propanol as a dispersing agent in pigment suspersions to be applied as coatings to paper and paperboard intended for food-contact use with aqueous foods.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c) (April 26, 1985; 50 FR 16636).

Dated: June 28 1985.

Sanford A. Miller,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 85-16208 Filed 7-8-85; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 85M-0290]

Bausch & Lomb Inc.; Premarket Approval of Bausch & Lomb ® Sensitive Eyes ™ Daily Cleaner

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Bausch & Lomb Inc., Rochester, NY, for premarket approval, under the Medical Device Amendments of 1976, of the Bausch & Lomb ® Sensitive Eyes ™ Daily Cleaner. After reviewing the recommendation of the Ophthalmic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant of the approval of the application.

DATE: Petitions for administrative review by August 8, 1985.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Richard E. Lippman, Center for Devices and Radiological Health (HFZ-460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7940.

SUPPLEMENTARY INFORMATION: On March 16, 1983, Bausch & Lomb Inc., Rochester, NY 14692, submitted to CDRH an application for premarket approval of the Bausch & Lomb ® Sensitive Eyes ™ Daily Cleaner. The device is indicated for use in cleaning soft (hydrophilic) contact lenses, in conjunction with either thermal or chemical disinfection regimens. This cleaner may be used with extended wear soft (hydrophilic) contact lenses as often as daily or as recommended by the user's eye care practitioner. On Novermber 18, 1983, the Ophthalmic Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On June 5, 1985, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

Before enactment of the Medical Device Amendments of 19076 (the amendments) (Pub. L. 94-295, 90 Stat. 539-583), contact lenses made of polymers other than polymethylmethacrylate (PMMA) and solutions for use with such contact lenses were regulated as new drugs. Because the amendments broadened the definition of the term "device" in section 201(h) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(h)), contact lenses made of polymers other than PMMA and solutions for use with such lenses are now regulated as class III devices (premarket approval). As FDA explained in a notice published in the **Federal Register** of December 16, 1977 (42 FR 63472), the amendments provide transitional provisions to ensure continuation of premarket approval requirements for class III devices formerly regulated as new drugs. Furthermore, FDA requires, as a condition to approval, that sponsors of applications for premarket approval of contact lenses made of polymers other than PMMA or solutions for use with such lenses comply with the records and reports provisions of Subpart D in Part 310 (21 CFR Part 310), until these provisions are replaced by similar requirements under the amendments.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Richard E. Lippman (HFZ-460), address above.

The labeling of the Bausch & Lomb ® Sensitive Eyes ™ Daily Cleaner states that the solution is indicated for use in the cleaning of soft (hydrophilic) contact lenses. Manufacturers of any soft (hydrophilic) contact lenses that have been approved for marketing are

advised that whenever CDRH publishes a notice in the **Federal Register** of CDRH's approval of a new solution for use with an approved sofy contact lens, the manufacturer of each lens shall correct its labeling to refer to the new solution at the next printing or at any other time CDRH prescribes by letter to the manufacturer. A manufacturer who fails to update the restrictive labeling may violate the misbranding provisions of section 502 of the act (21 U.S.C. 352) as well as the Federal Trade Commission Act (15 U.S.C. 41–58), as amended by the Magnuson-Moss Warranty-Federal Trade Commission Improvement Act (Pub. L. 93–637). Furthermore, failure to update the restrictive labeling to refer to new solutions that may be used with an approved lens may be grounds for withdrawing approval of the application for the lens under section 515(e)(1)(F) of the act (21 U.S.C. 360e(e)(1)(F)).

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register.** If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before August 8, 1985, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554–555, 571 (21 U.S.C. 360e(d), 360(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: July 1, 1985.

John C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 85–16209 Filed 7–8–85; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 85F–0233]

B.F. Goodrich Co.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the B.F. Goodrich Co. has filed a petition proposing to amend the food additive regulations to provide for the inclusion of a new use of 3,5-di-*tert*-butyl-4-hydroxyhydrocinnamic acid triester with 1,3,5-tris(2-hydroxyethyl)-s-triazine-2,4,6-(1*H*,3*H*,5*H*)-trione as a component of olefin and copolymers intended for use as food-contact articles.

FOR FURTHER INFORMATION CONTACT: Lester Borodinsky, Center for Food Safety and Applied Nutrition (HFF–334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 5B3862) has been filed by B.F. Goodrich Co., Akron, OH 44318, proposing to amend the food additive regulations in 21 CFR 178.2010 to provide for the inclusion of a new use of 3,5-di-*tert*-butyl-4-hydroxyhydrocinnamic acid triester with 1,3,5-tris(2-hydroxyethyl)-s-triazine-2,4,6-(1*H*,3*H*,5*H*)-trione as a component of olefin copolymers intended for use as food-contact articles.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c) (April 26, 1985; 50 FR 16636).

Dated: June 29, 1985.

Sanford A. Miller,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 85–16207 Filed 7–8–85; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 85N–0263]

Neurotoxicity and Behavioral Dysfunction; Announcement of Symposium and Workshop; Request for Data and Information

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the Federation of American Societies for Experimental Biology (FAEB), Life Sciences Research Office (LSRO), will conduct a symposium and workshop to examine certain scientific issues related to neurotoxicity and behavioral dysfuction. The symposium will be open to the public. The workshop will be held by invitation only.

DATES: The symposium will be held on Monday, September 30, 1985, at the Bethesda Holiday Inn, 8120 Wisconsin Ave., Bethesda, MD, from 8:30 a.m. to 5 p.m. the workshop will be held on Tuesday October 1, 1985, at FASEB (address below). Relevant data and information may be submitted until September 23, 1985.

ADDRESSES: Relevant data and information should be submitted to both the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, and the Life Sciences Research Office, Federation of American Societies for Experimental Biology, 9650 Rockville Pike, Bethesda, MD 20814. Two copies of the relevant data and information should be submitted to both the FDA's Dockets Management Branch and the Life Sciences Research Office. Requests for information about the symposium and workshop should be made to the individuals listed below.

FOR FURTHER INFORMATION CONTACT:

Richard W. Leukroth, Jr., Life Sciences Research Office, Federation of American Societies for Experimental Biology, 9650 Rockville Pike, Bethesda, MD 20814, 301–530–7030;

or

Thomas J. Sobotka, Center For Food Safety and Applied Nutrition (HFF–162), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–245–1304.

SUPPLEMENTARY INFORMATION: The Food and Drug Administration has a contract (223–83–2020) with FASEB. The objectives of this contract are: (1) To provide expert, objective counsel to the agency on general and specific issues of scientific fact and (2) to explore the effectiveness and efficiency of various review mechanisms. FDA has specifically requested that FASEB address the following scientific questions:

(1) To what extent do the various traditional toxicity tests (particularly reproduction, acute, subacute, and chronic studies), carried out at exposure levels high enough to produce toxic effects, give information about the nature and scope of potential neurotoxicity or behavioral dysfunction? What particular endpoints in these traditional toxicity tests serve to indicate neuronal dysfunction?

(2) To what extent do such traditional toxicity test not give information about the nature and scope of neurotoxicity or behavioral dysfunction? What aspects of neurobehavioral toxicity would or might be missed by relying only on traditional toxicity tests? What type of neurobehavioral test battery would be necessary to complement traditional testing to supply this information?

(3) If neuronal involvement is indicated by traditional toxicity tests, what type of neuro-test battery would be needed to characterize better the nature and extent of the neuronal dysfunction?

In response to FDA's request, FASEB will hold an open symposium, as well as a workshop limited to those invited by FASEB, to address these questions.

Related topical areas that will be discussed during the symposium and workshop include: (1) The use of neurotoxicity and neurobehavioral data derived from present toxicological screening protocols; (2) molecular and cellular mechanisms by which chemicals cause neurotoxicity and behavioral abnormalities; (3) chemically caused central or peripheral neuropathies, including the biological processes whereby these neuropathies are expressed; (4) extrapolation of neurotoxic or behavioral abnormalities from animals to humans; (5) immunologic aspects of the nervous system; (6) the role of genetic factors in neurotoxicity and behavioral abnormalities; (7) anatomical aspects of neurotoxicity and behavioral abnormalities; (8) epidemiology of neurobehavioral abnormalities; and (9) the effects of dietary and environmental chemicals on neurological abnormalities and behavioral aberrations.

A brochure describing the symposium program, invited speakers, and registration procedures is available from the contact individuals listed above. Interested persons are invited to submit scientific data, information, and related reference materials. Proceedings of the symposium and workshop will be published and will be provided to all attendees.

Dated: July 3, 1985.

Mervin H. Shumate,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 85–16242 Filed 7–8–85; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

District Advisory Councils Nominations

AGENCY: Bureau of Land Management, Interior.

ACTION: Call for Nominations for District Advisory Councils.

SUMMARY: The purpose of this notice is to solicit public nominations to fill those positions for which terms expire this year on each of the Bureau of Land Management's 52 District Advisory Councils. Each council has four such positions to fill, except the California Desert District Advisory Council, which has five such positions to fill.

Each affected council comprises 10 members, except the California Desert District Advisory Council, which comprises 15 members. Under the staggered-term arrangement instituted by the Secretary of the Interior in 1982, the terms of five members on the California Desert District Advisory Council and the terms of four members on each of the remaining 51 councils will expire on December 31, 1985. Current council members may be reappointed or new members may be appointed. Appointments made by the Secretary pursuant to this call will assure continued representation of specific categories of interest on each council. The new terms will expire December 31, 1988.

To ensure council membership that is balanced in terms of categories of interest represented and functions performed, nominees must be qualified to provide advice in specific areas identified with each council position now up for appointment. Categories for specific councils will be announced through local news releases in the appropriate States and Districts and will include the following:

Elected General Purpose Government
Environmental Protection
Recreation
Renewable Resources (livestock, forestry, agriculture)
Non-Renewable Resources (mining, oil and gas, extractive industries)
Transportation/Rights-of-Way
Wildlife
Public-at-Large.

The purpose of the councils is to provide informed advice to the respective District Managers on the management of the public lands. Members will serve without salary, but will be reimbursed for travel and per diem expenses at current rates for Government employees.

Each council normally will meet at least twice annually. Additional meetings may be called by the District Manager or his designee in connection with special needs for advice.

Persons wishing to nominate individuals or to be nominated to serve on a District Advisory Council should contact the appropriate District Manager of the Bureau of Land Management to ascertain which categories of interest are to be represented. They should then provide the District Manager with the names, addresses, professions, and other biographic data of qualified nominees.

DATE: All nominations should be received by August 2, 1985.

ADDRESSES: The mailing address of each Bureau District Manager is as follows:

Alaska

Anchorage District Office, 4700 East 72nd Avenue, Anchorage, Alaska 99507
Fairbanks District Office, 1541 Gaffney Road, Fairbanks, Alaska 99703

Arizona

Arizona Strip District Office, 196 East Tabernacle, St. George, Utah 84770
Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027
Safford District Office, 425 East 4th Street, Safford, Arizona 85546
Yuma District Office, 2450 Fourth Avenue, P.O. Box 5680, Yuma, Arizona 85364

California

Bakersfield District Office, 800 Truxtun Avenue, Room 311, Bakersfield, California 93301
California Desert District Office, 1695 Spruce Street, Riverside, California 92507
Susanville District Office, 705 Hall Street, P.O. Box 1090, Susanville, California 96130

Ukiah District Office, 555 Leslie Street, Ukiah, California 95482

Colorado

Canon City District Office, 3080 East Main Street, P.O. Box 311, Canon City, Colorado 81212
Craig District Office, 455 Emerson Street, Craig, Colorado 81625
Grand Junction District Office, 764 Horizon Drive, Grand Junction, Colorado 81506
Montrose District Office, 2465 South Townsend, Montrose, Colorado 81401

Idaho

Boise District Office, 3948 Development Avenue, Boise, Idaho 83705
Burley District Office, Route 3, Box 1, Burley, Idaho 83318
Coeur d'Alene District Office, 1808 North Third Street, Coeur d'Alene, Idaho 83814
Idaho Falls District Office, 940 Lincoln Road, Idaho Falls, Idaho 83401
Salmon District Office, P.O. Box 430, Salmon, Idaho 83467
Shoshone District Office, 400 West "F" Street, P.O. Box 2B, Shoshone, Idaho 83352

Montana

Butte District Office, 106 North Parkmont, P.O. Box 3388, Butte, Montana 59702
Dickinson District Office, 204 Sims Street, P.O. Box 1229, Dickinson, North Dakota 58602
Lewistown District Office, Airport Road, Lewistown, Montana 59457
Miles City District Office, West of Miles City, P.O. Box 940, Miles City, Montana 59301

Nevada

Battle Mountain District Office, P.O. Box 1420, Battle Mountain, Nevada 89820
Carson City District Office, 1050 East William Street, Suite 335, Carson City, Nevada 89701
Elko District Office, P.O. Box 831, Elko, Nevada 89801
Ely District Office, Star Route 5, Box 1, Ely Nevada 89301
Las Vegas District Office, 4765 Vegas Drive, P.O. Box 26569, Las Vegas, Nevada 89126
Winnemucca District Office, 705 East 4th Street, Winnemucca, Nevada 89445

New Mexico

Albuquerque District Office, 505 Marquette Avenue, N.W., P.O. Box 6770, Albuquerque, New Mexico 87197-6770
Las Cruces District Office, 1800 Marquess Street, P.O. Box 1420, Las Cruces, New Mexico 88004
Roswell District Office, 1717 West Second Street, Featherstone Farms Building, P.O. Box 1397, Roswell, New Mexico 88201-1397

Oregon

Burns District Office, 74 South Alvord Street, Burns, Oregon 97720
Coos Bay District Office, 333 South 4th Street, Coos Bay, Oregon 97420
Eugene District Office, 1255 Pearl Street, P.O. Box 10226, Eugene, Oregon 97440
Lakeview District Office, 1000 South 9th, P.O. Box 151, Lakeview, Oregon 97630
Medford District Office, 3040 Biddle Road, Medford, Oregon 97504
Prineville District Office, 185 East 4th Street, P.O. Box 550, Prineville, Oregon 97754
Roseburg District Office, 777 N.W. Garden Valley Boulevard, Roseburg, Oregon 97470
Salem District Office, 1717 Fabry Road, S.E., P.O. Box 3227, Salem, Oregon 97302
Spokane District Office, East 4217 Main Avenue, Spokane, Washington 99202
Vale District Office, 100 East Oregon Street, P.O. Box 700, Vale, Oregon 97918

Utah

Cedar City District Office, 1579 North Main Street, P.O. Box 724, Cedar City, Utah 84720
Moab District Office, 82 East Dogwood, P.O. Box 970, Moab, Utah 84532
Richfield District Office, 150 East 900 North, Richfield, Utah 84701
Salt Lake District Office, 2370 South 2300 West, Salt Lake City, Utah 84119
Vernal District Office, 170 South 500 East, Vernal, Utah 84078

Wyoming

Casper District Office, 951 North Poplar Road, Casper, Wyoming 82601
Rawlins District Office, 1300 Third Street, P.O. Box 670, Rawlins, Wyoming 82301
Rock Springs District Office, Highway 191 North, P.O. Box 1869, Rock Springs, Wyoming 82902-1869
Worland District Office, 1700 Robertson Avenue, P.O. Box 119, Worland, Wyoming 82401.

FOR FURTHER INFORMATION CONTACT: The respective District Managers.

Dated: July 3, 1985.

James M. Parker,

Acting Director.

[FR Doc. 85-16257 Filed 7-8-85; 8:45 am]

BILLING CODE 4310-84-M

[W-04223, W-04244]

Washington; Proposed Patent of Public Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Washington State Game Department has submitted applications to patent the following described unsurveyed island in Moses Lake, Grant County, Washington, for protection and perpetuation of wildlife, and for public recreation compatible with wildlife management objectives:

Willamette Meridian, Washington

T. 19 N., R. 28 E.,
Sec. 7, por. SE¼ (Heron Island);
Sec. 33, por. E½SE¼; and
Sec. 34, por. W½SW¼ (Goat Island).
Encompassing 35 acres, more or less.

The islands are primarily valuable for public purposes and recreational uses. They have been leased to the State of Washington for these purposes since 1962.

Patenting of the islands to Washington State will serve important public objectives by providing for protection and perpetuation of wildlife and compatible public recreation by retaining the islands in a natural condition.

DATES: For a period of thirty days from the date of this notice, interested parties may submit comments to the District Manager, Bureau of Land Management, East 4217 Main Avenue, Spokane, Washington 99202. Additional information concerning this proposal is available for review at the above office.

Any adverse comments will be evaluated by the State Director, who may vacate or modify this action and issue a final determination. In the absence of any action by the State Director, this action will become the final decision of this department.

Joseph K. Buesing,

District Manager.

[FR Doc. 85-16238 Filed 7-8-85; 8:45 am]

BILLING CODE 4310-33-M

Establishment of 14 Day Camping Limit on Public Lands Within the Montrose District, CO

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice.

SUMMARY: In accordance with 43 CFR 8364.1 and 8365.1-2, a maximum camping stay of 14 days per site is established for all public lands within

the Montrose District in Colorado. This restriction applies year-round on all developed, undeveloped, designated, and nondesignated sites used for camping.

EFFECTIVE DATE: July 9, 1985.

SUPPLEMENTARY INFORMATION: This restriction is necessary to prevent excessive impacts to soil, vegetation and other resources caused by long-term camping. The restriction applies to all public land users except those who have obtained prior approval from the authorized officer, and those who are specifically allowed a longer stay under the terms of a Special Recreation Permit.

FOR FURTHER INFORMATION CONTACT: District Manager, Montrose District Office, Bureau of Land Management, 2465 South Townsend, Montrose, Colorado 81401, (303) 249–7791.

Dated: June 25, 1985.

Robert S. Schmidt,

Acting District Manager.

[FR Doc. 85–16234 Filed 7–8–85; 8:45 am]

BILLING CODE 4310–JB–M

Colorado; Filing of Plats of Survey

June 26, 1985.

The plats of survey of the following described land will be officially filed in the Colorado State Office, Bureau of Land Management, Denver, Colorado, effective 10:00 a.m., June 26, 1985.

The plat representing the dependent resurvey of a portion of the west boundary and subdivisional lines; the survey of the subdivision of section 6, and the metes-and-bounds survey of Tract 39, T. 1 N., R. 72 W., Sixth Principal Meridian, Colorado, Group No. 432, was accepted June 20, 1985.

The plat representing the dependent resurvey of a portion of the New Mexico Principal Meridian, (east boundary), a portion of the south boundary, the west and north boundaries, and a portion of the subdivisional lines, and the survey of the subdivision of certain sections, T. 46 N., R. 1 W., New Mexico Principal Meridian, Colorado, Group No. 740, was accepted June 20, 1985.

These surveys were executed to meet certain administrative needs of this Bureau.

All inquiries about this land should be sent to the Colorado State Office, Bureau of Land Management, 2020 Arapahoe Street, Denver, Colorado 80205.

Jack A. Eaves,

Acting Chief Cadastral Surveyor for Colorado.

[FR Doc. 85–16233 Filed 7–8–85; 8:45 am]

BILLING CODE 4310–84–M

Realty Action; Proposed Leasing of Public Land; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed leasing of public land in Teller and Boulder Counties, Colorado.

SUMMARY: A parcel of land is being considered for lease under section 302 of the Federal Land Policy and Management Act of 1976 (90 Stat 2762; 43 USC 1932). Leasing of the land will authorize existing uses and improvements, and will allow the government to collect fair market rental. The land and the prospective lessee is as follows:

Sixth Principal Meridian, CO

T. 3S., R 73W., Sec. 19, a parcel of land being a part of the unpatented Little Midget claim, containing 3 acres in Clear Creek County. Prospective lessee: Jean V. Nickens.

The parcel would be offered to the present homeowner for direct, noncompetitive lease at no less than fair market rental. The size, configuration and location of the parcel limits other potential uses or users. The general terms and conditions for the lease are found in 43 CFR 2920.7.

The lessee would be required to reimburse the United States for reasonable costs incurred in processing and monitoring the lease, in accordance with 43 CFR 2920.6.

For a period of 30 days from publication of this notice, interested parties may submit comments to the District Manager, Bureau of Land Management, 3080 East Main Street, Canon City, Colorado 81212. Any adverse comments will be evaluated and the decision to issue a lease affirmed, modified or rejected.

Clarence Pearson,

Acting District Manager.

[FR Doc. 85–16235 Filed 7–8–85; 8:45 am]

BILLING CODE 4310–JB–M

Vernal District Grazing Advisory Board; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given in accordance with Pub. L. 92–463 that a meeting of the Vernal District Grazing Advisory Board will be held August 21 and 22, 1985.

The meeting will begin at 8:00 a.m. at the BLM office (at the above noted address).

The agenda for the meeting will include: (1) A tour of Bookcliffs Range Improvement Work, Bookcliffs Resource Management Plan and Range Program Summary Proposals, (2) Progress FY85 Range Improvement (RI) Work, (3) Proposed FY86, 87 RI Work, (4) Allotment Management, Rangeland Monitoring and Allotment Evaluation Program, (5) Predator and Pest Control, (6) Slide Summary Wood Canyon Wood Sales, and (7) Slide Presentation Bookcliffs Ungulate Study.

The meeting is open to the public. Interested persons must furnish their own transportation and camp facilities. Anyone wishing to participate or present a statement should notify the District Manager, BLM, 170 South 500 East, Vernal, Utah by August 20, 1985.

Don Alvord,

Associate District Manager.

[FR Doc. 85–16239 Filed 7–8–85; 8:45 am]

BILLING CODE 4310–DQ–M

[AA–6667–A]

AHTNA, Inc.; Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Sec. 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971 (ANCSA), 43 U.S.C. 1601, 1613, will be issued to AHTNA, Incorporated for 130 acres. The lands involved are in the vicinity of Gulkana.

T. 5 N., R. 1 W., Copper River Meridian (Surveyed)
Portions of Secs. 19, 20, and 29.

A notice of the decision will be published once a week for four (4) consecutive weeks, in the Copper Valley Views. Copies of the decision may be obtained by contacting the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513. ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision shall have until August 8, 1985, to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management, Division of Conveyance Management (960), address identified above, where the requirements for filing an appeal can be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E

shall be deemed to have waived their rights.

Ruth Stockie,

Section Chief, Branch of ANCSA Adjudication.

[FR Doc. 85-16259 Filed 7-8-85; 8:45 am]

BILLING CODE 4310-JA-M

[OR 22247]

Notice of Realty Action; Exchange of Lands; Oregon

The following described lands have been determined to be potentially suitable for disposal by exchange under Section 206 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2758; 43 U.S.C. 1716):

WILLAMETTE MERIDIAN—FEDERAL (SELECTED) LAND

	Acreage
T. 23 S., R. 27 E.:	
Section 32: S½N½, S½	480.00
Section 34: E½E½, NW¼NE¼	200.00
T. 23 S., R. 27 E.:	
Section 2: Lots 1–4 inclusive, S½N½	321.76
Section 4: Lots 1–4 inclusive, S½N½, S½	639.03
Section 6: Lots 6, 7, and 11, SE¼SE¼	98.92
Section 8: All	640.00
Section 10: W½, W½E½	480.00
Section 12: All	640.00
Section 24: N½NE¼, SW¼NE¼, NW¼SE¼	160.00
T. 24 S., R. 28 E.: Section 19: Lot 2	39.95
Approximately	3,699.66

The area described aggregates approximately 3699.66(±) acres in Harney County, Oregon.

In exchange for all or some of these lands the United States will acquire the following described private land from Jim Towery, et. al. (final acreages dependent upon appraisals and environmental assessments):

WILLAMETTE MERIDIAN—PRIVATE (OFFERED) LAND

	Acreage
T. 21 S., R. 29 E.:	
Section 5: SW¼SW¼	40.00
Section 8: W½NW¼, NW¼SW¼	120.00
T. 23 S., R. 25 E.:	
Section 31: SW¼NE¼	40.00
Section 32: NE¼SE¼	40.00
Section 33: N½SW¼, NW¼SE¼	120.00
T. 24 S., R. 24 E.:	
Section 2: W½SE¼, E½SW¼	160.00
Section 11: NE¼, N½SE¼, SE¼SE¼, NE¼NW¼	320.00
Section 15: NW¼NE¼	40.00
Section 24: SE¼NW¼	40.00
T. 24 S., R. 27 E.:	
Section 7: W½ (area west of Hwy 395)	230.00
Section 17: All	640.00
Section 19: Lots 1–4 inclusive, E½W½, E½	637.60
Section 21: All	640.00
Section 25: NE¼, N½NW¼, SW¼	400.00
T. 24 S., R. 28 E.: Section 19: SE¼NW¼	40.00
Approximately	3,507.60

The area described aggregates approximately 3507.60(±) acres in Harney County.

The purpose of the exchange is to facilitate the resource management program of the Bureau of Land Management, to enhance the range management potential for the area and the exchange would be highly beneficial for recreational use, wildlife habitat, and riparian habitat.

The Federal lands that will be exchanged are hard to manage parcels mostly surrounded by the private lands of the exchange proponent. The Federal lands have not been identified for any higher priority values, their disposal is consistent with other land use objectives, and is not inconsistent with any other resource value allocations.

This proposal is consistent with Bureau planning for the lands involved and has been discussed with State and local officials. The public interest will be well served by making this exchange. The comparative values of the lands exchanged will be approximately equal and the acreage will be adjusted and/or mnoney will be used to equalize the values upon completion of the final appraisal of the lands. Any monetary adjustments made will be for no more than 25% of the appraised value of Federal lands involved.

The exchange will be subject to:

(1) A reservation to the United States of a right-of-way for ditches or canals under the Act of August 30, 1980.

(2) Valid, exisiting rights including but not limited to any right-of-way, easement, or lease of record.

Publication of this notice has the effect of segregating all of the above described Federal land from appropriation, under the public land laws and these lands are further segregated from appropriation under the mining laws, but not from exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976. The segregative effect of this notice will terminate upon issuance of patent or in two years from the date of the publication of this notice, whichever occurs first.

Detailed information concerning the exchange is available for review at the Burns District Office of the Bureau of Land Management, 74 South Alvord, Burns, Oregon, 97720.

For a period of 60 days after the date of issuance of this notice, the public and interested parties may submit comments to the Burns District Manager, at the above address. Any adverse comments received as a result of the Notice of Realty Action or notification to the Congressional delegation will be evaluated by the District Manager who may vacate or modify this realty action and issue a final determination. In the absence of any action by the District Manager, this realty action will become a final determination of the Department of the Interior. Interested parties should continue to check with the District Office to keep themselves advised of changes.

Dated: June 27, 1985.

Joshua L. Warburton,

District Manager.

[FR Doc. 85-16328 Filed 7-8-85; 8:45 am]

BILLING CODE 4310-33-M

[OR 32760]

Realty Action; Exchange of Lands; Oregon

The following described lands have been determined to be potentially suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2756; 43 U.S.C. 1716):

WILLAMETTE MERIDIAN—HARNEY COUNTY TRACTS

	Acreage
T. 30 S., R. 31 E.:	
Section 14: SW¼NW¼, W½SW¼	120.00
Section 15: SE¼NE¼, E½SE¼	120.00
Section 23: W½NE¼, SE¼NE¼, NW¼, E½SW¼, SE¼	520.00
Section 24: SW¼NW¼, N½SW¼, SE¼	280.00
Section 25: SW¼, S½SE¼	240.00
Section 26: NE¼, E½NW¼, E½SW¼, SE¼	480.00
Section 35: NE¼NE¼	40.00
T. 30 S., R. 32 E.:	
Section 19: Lot 4, SE¼SW¼	79.93
Section 28: SW¼NW¼, SW¼, SW¼SE¼	240.00
Section 29: E½, N½SW¼	400.00
Section 30: Lot 4, NW¼NE¼, S½NE¼, NE¼NW¼, SE¼SW¼, NE¼SE¼	280.81
Section 32: W½NE¼, NW¼NE¼	120.00
Section 33: E½NE¼, NW¼, N½SW¼, NW¼SE¼	360.00

The area described aggregates approximately 3280.74(±) acres in Harney County, Oregon.

In exchange for all or some of these lands the United States will acquire the following described private land from Hammond Ranches, Inc. (final acreages dependent upon appraisals and environmental assessments):

WILLAMETTE MERIDIAN

	Acreage
T. 31 S., R. 32½ E.:	
Section 10: NE¼NE¼, NE¼SE¼, S½SE¼	160.00
Section 11: SW¼NE¼, NW¼NW¼, S½NW¼, S½	480.00
Section 12: NW¼SW¼, S½SW¼	120.00
Section 14: NW¼, N½SW¼	240.00
Section 15: NW¼, NE¼SE¼	200.00
Section 21: SW¼NE¼, NE¼SE¼	80.00

The area described aggregates approximately 1280.00 (±) acres in Harney County.

The purpose of the exchange is to facilitate the resource management program of the Bureau of Land Management, to enhance the range management potential for the area and the exchange would be highly beneficial for recreational use, wildlife habitat, and riparian habitat.

The Federal lands that will be exchanged are hard to manage parcels mostly surrounded by the private lands of the exchange proponent. The Federal lands have not been identified for any higher priority values, their disposal is consistent with other land use objectives, and is not inconsistent with any other resource value allocations.

This proposal is consistent with Bureau planning for the lands involved and has been discussed with State and local officials. The public interest will be well served by making this exchange. The comparative values of the lands exchanged will be approximately equal and the acreage will be adjusted and/or money will be used to equalize the values upon completion of the final appraisal of the lands. Any monetary adjustments made will be for no more than 25% of the appraised value of Federal lands involved.

The exchange will be subject to:

(1) A reservation to the United States of a right-of-way for ditches or canals under the Act of August 30, 1890.

(2) Valid, existing rights including but not limited to any right-of-way, easement, or lease of record.

Publication of this notice has the effect of segregating all of the above described Federal land from appropriation, under the public land laws and these lands are further segregated from appropriation under the mining laws, but not from exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976. The segregative effect of this notice will terminate upon issuance of patent or in two years from the date of the publication of this notice, whichever occurs first.

Detailed information concerning the exchange is available for review at the Burns District Office of the Bureau of Land Management, 74 South Alvord, Burns, Oregon, 97720.

For a period of 60 days after the date of issuance of this notice, the public and interested parties may submit comments to the Burns District Manager, at the above address. Any adverse comments received as a result of the Notice of Realty Action or notification to the Congressional delegation will be evaluated by the District Manager who may vacate or modify this realty action and issue a final determination. In the absence of any action by the District Manager, this realty action will become a final determination of the Department of the Interior. Interested parties should continue to check with the District Office to keep themselves advised of changes.

Dated: June 18, 1985.

Joshua L. Warburton,

District Manager.

[FR Doc. 85-16329 Filed 7-8-85; 8:45 am]

BILLING CODE 4310-33-M

[OR 24855]

Realty Action; Exchange of Lands; Oregon

The following described lands have been determined to be potentially suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2756; 43 U.S.C. 1716):

WILLAMETTE MERIDIAN—HARNEY COUNTY TRACTS

	Acreage
T. 41 S., R. 35 E.:	
Section 20: Lot 1, W½NW¼, NW¼SW¼	143.90
Section 21: Lots 1 and 2, S½NW¼, N½SW¼	193.84

The area described aggregates approximately 337.74(±) acres in Harney County, Oregon.

In exchange for all or some of these lands the United States will acquire the following described private land from Mr. William P. Moser (final acreages dependent upon appraisals and environmental assessments):

WILLAMETTE MERIDIAN

	Acreage
T. 41 S., R. 34 E., W.M.:	
Section 2: SE¼SW¼, SW¼SE¼	80.00
Section 11: NE¼NW¼, NW¼NE¼	80.00
T. 40 S., R. 35 E., W.M.:	
Section 35: SW¼SW¼	40.00
T. 41 S., R. 35 E., W.M.:	
Section 2: Lot 4, SW¼NW¼, NW¼SW¼	119.85

The area described aggregates approximately 319.85 (±) acres in Harney County.

The purpose of the exchange is to facilitate the resource management program of the Bureau of Land Management, to enhance the range management potential for the area and the exchange would be highly beneficial for recreational use, wildlife habitat, and watershed values.

The Federal lands that will be exchanged are hard to manage parcels mostly surrounded by the private lands of the exchange proponent. The Federal lands have not been identified for any higher priority values, their disposal is consistent with other land use objectives, and is not inconsistent with any other resource value allocations.

This proposal is consistent with Bureau planning for the lands involved and has been discussed with State and local officials. The public interest will be well served by making this exchange. The comparative values of the lands exchanged will be approximately equal and the acreage will be adjusted and/or money will be used to equalize the values upon completion of the final appraisal of the lands. Any monetary adjustments made will be for no more than 25% of the appraised value of Federal lands involved.

The exchange will be subject to:

(1) A reservation to the United States of a right-of-way for ditches or canals under the Act of August 30, 1890.

(2) Valid, existing rights including but not limited to any right-of-way, easement, or lease of record.

Publication of this notice has the effect of segregating all of the above described Federal land from appropriation, under the public land laws and these lands are further segregated from appropriation under the mining laws, but not from exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976. The segregative effect of this notice will terminate upon issuance of patent or in two years from the date of the publication of this notice, whichever occurs first.

Detailed information concerning the exchange is available for review at the Burns District Office of the Bureau of Land Management, 74 South Alvord, Burns, Oregon 97720.

For a period of 60 days after the date of issuance of this notice, the public and interested parties may submit comments to the Burns District Manager, at the above address. Any adverse comments received as a result of the Notice of Realty Action or notification to the Congressional delegation will be evaluated by the District Manager, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the District Manager, this realty action will become a final determination of the Department of the Interior. Interested parties should continue to check with the District Office to keep themselves advised of changes.

Dated: June 18, 1985

Joshua L. Warburton,

District Manager.

[FR Doc. 85-16330 Filed 7-8-85; 8:45 am]

BILLING CODE 4310-33-M

[Nev-044346]

Proposed Partial Modification and Continuation of Withdrawal; Nevada

June 25, 1985.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Forest Service proposes that 40 acres of a recreation site withdrawal be continued for an additional 20 years. The land will remain closed to surface entry and mining. The land has been and will remain open to mineral leasing.

DATE: Comments must be received by October 7, 1985.

ADDRESS: Comments should be sent to: Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, P.O. Box 12000, Reno, Nevada 89520.

FOR FURTHER INFORMATION CONTACT: Vienna Wolder, Bureau of Land Management, Nevada State Office, (702) 784-5703.

SUPPLEMENTARY INFORMATION: The U.S. Forest Service proposes that 40 acres of an 80-acre recreation site withdrawal established by Public Land Order 1796 of February 19, 1959, be continued for a period of 20 years pursuant to section 204(d) of the Federal Land Policy and Management Act of 1976, 90 Stat. 2753; 43 U.S.C. 1714. The land is described as follows:

Mount Diablo Meridian

T. 36 N., R. 61 E.,
Sec. 4, SE¼SE¼.

The area contains 40 acres in Elko County.

The purpose of the withdrawal is to protect the Angel Lake Recreation Site. The withdrawal segregates the land from operation of the public land laws, including the mining laws, but not the mineral leasing laws. No change is proposed in the purpose or segregative effect of the withdrawal.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the Chief, Branch of Lands and Minerals Operations, in the Nevada State Office.

The authorized officer of the Bureau of Land Management, will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued and, if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register**. The existing withdrawal will continue until such final determination is made.

Edward F. Spang,

State Director, Nevada.

[FR Doc. 85-16317 Filed 7-8-85; 8:45 am]

BILLING CODE 4310-HC-M

Fish and Wildlife Service

Issuance of Permit for Marine Mammals; Carle Foundation Hospital

On May 2, 1985, a notice was published in the **Federal Register** (Vol. 50, No. 85) that an application had been filed with the Fish and Wildlife Service by Carle Foundation Hospital (PRT-691972) for a permit to import 300 polar bear blood samples per year for research.

Notice is hereby given that on June 13, 1985, as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the Endangered Species Act of 1972 (16 U.S.C. 1539), the Fish and Wildlife Service issued a permit subject to certain conditions set forth therein.

The permit is available for public inspection during normal business hours at the Fish and Wildlife Service's Office in Room 605, 1000 North Glebe Road, Arlington, Virginia 22201.

Dated: July 2, 1985.

R.K. Robinson,

Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 85-16266 Filed 7-8-85; 8:45 am]

BILLING CODE 4310-55-M

Minerals Management Service

Development Operations Coordination Document; Tenneco Oil Exploration and Production

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Tenneco Oil Exploration and Production has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 4567, Block 392, Galveston Area, Offshore Texas. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Sabine Pass, Texas.

DATE: The subject DOCD was deemed submitted on June 27, 1985.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Mr. Michael J. Tolbert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838-0875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became efective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: June 27, 1985.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85-16232 Filed 7-8-85; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

National Register of Historic Places; Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before June 29, 1985. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, D.C. 20243. Written

comments should be submitted by July 24, 1985.

Carol D. Shull,

Chief of Registration, National Register.

ARIZONA

Pinal County

Casa Grande, *Casa Grande Union High School and Gymnasium (Casa Grande MRA)*, 420 E. Florence Blvd.

Case Grande, *Day, Judge William T., House (Casa Grande MRA)*, 310 West 1st St.

CONNECTICUT

Hartford County

Hartford, *West End North Historic District*, Roughly bounded by Farmington Ave., Lorraine, Elizabeth, and Highland Sts.

GEORGIA

Atlanta County

Gainesville, *Chicipee Mill and Village Historic District*, Roughly bounded by Fourth & Fifth Sts., North, K, 8th, H, G & F Aves. on US 23

DeKalb County

Decatur, *Lee, Agnes, Chapter House of the United Daughters of the Confederacy*, 120 Avery St.

Floyd County

Rome, *East Rome Historic District*, Roughly bounded by Walnut Ave., McCall Blvd., E. 8th and 10th Sts.

Oglethorpe County

Vesta, *Smith-Harris House*, CR 207

Randolph County

Shellman, *Shellman Historic District*, Roughly bounded by Dean, Church, Mary Lou, Ward, Pecan and Pine Sts.

MARYLAND

Baltimore County

Woodlawn vicinity, *Lorraine Cemetery Gate Lodge*, 5608 Dogwood Rd.

Carroll County

Houcksville vicinity, *Hoffman, Issac, House*, 364 Shamer Lane

Westminister vicinity, *Meadow Brook Farm*, 1006 Taneytown Pike

Harford County

Bel Air, *Bel Air Courthouse Historic District*, Office, Courtland and Main Sts.

MISSOURI

Jackson County

Kansas City, *Gloyd Building*, 921 Walnut

NEW JERSEY

Bergen County

Franklin Lakes, *Blauvelt House (Stone House of Bergen County MRA)*, 205 Woodside Ave.

NEW MEXICO

McKinley County

Archeological Site # LA 15278 (Reservoir Site; CM 100) (Chaco Mesa Pueblo III TR)
Archeological Site # LA 45,780 (Chaco Mesa Pueblo III TR)
Archeological Site # LA 45,781 (Chaco Mesa Pueblo III TR)
Archeological Site # LA 45,782 (Chaco Mesa Pueblo III TR)
Archeological Site # LA 45,784 (Chaco Mesa Pueblo III TR)
Archeological Site # LA 45,785 (Chaco Mesa Pueblo III TR)
Archeological Site # LA 45,786 (Chaco Mesa Pueblo III TR)
Archeological Site # LA 45,789 (Chaco Mesa Pueblo III TR)
Archeological Site # LA 50,000 (Chaco Mesa Pueblo III TR)
Archeological Site # LA 50,001 (Chaco Mesa Pueblo III TR)
Archeological Site # LA 50,013 (CM 101)(Chaco Mesa Pueblo III TR)
Archeological Site # LA 50,014 (CM 102)(Chaco Mesa Pueblo III TR)
Archeological Site # LA 50,015 (CM 102A)(Chaco Mesa Pueblo III TR)
Archeological Site # LA 50,016 (CM 103)(Chaco Mesa Pueblo III TR)
Archeological Site # LA 50,017 (CM 104)(Chaco Mesa Pueblo III TR)
Archeological Site # LA 50,018 (Chaco Mesa Pueblo III TR)
Archeological Site # LA 50,019 (CM 105)(Chaco Mesa Pueblo III TR)
Archeological Site # LA 50,020 (CM 106)(Chaco Mesa Pueblo III TR)
Archeological Site # LA 50,021 (Chaco Mesa Pueblo III TR)
Archeological Site # LA 50,022 (CM 107)(Chaco Mesa Pueblo III TR)
Archeological Site # LA 50,023 (CM 118)(Chaco Mesa Pueblo III TR)
Archeological Site # LA 50,024 (CM 108)(Chaco Mesa Pueblo III TR)
Archeological Site # LA 50,025 (CM 109)(Chaco Mesa Pueblo III TR)
Archeological Site # LA 50,026 (CM 110)(Chaco Mesa Pueblo III TR)
Archeological Site # LA 50,027 (CM 111)(Chaco Mesa Pueblo III TR)
Archeological Site # LA 50,028 (CM 112)(Chaco Mesa Pueblo III TR)
Archeological Site # LA 50,030 (CM 114)(Chaco Mesa Pueblo III TR)
Archeological Site # LA 50,031 (CM 115)(Chaco Mesa Pueblo III TR)
Archeological Site # LA 50,033 (CM 117)(Chaco Mesa Pueblo III TR)
Archeological Site # LA 50,034 (Chaco Mesa Pueblo III TR)
Archeological Site # LA 50,035 (Chaco Mesa Pueblo III TR)
Archeological Site # LA 50,036 (Chaco Mesa Pueblo III TR)
Archeological Site # LA 50,037 (Chaco Mesa Pueblo III TR)
Archeological Site # LA 50,038 (Chaco Mesa Pueblo III TR)
Archeological Site # LA 50,044 (Chaco Mesa Pueblo III TR)
Archeological Site # LA 50,071 (CM 148)(Chaco Mesa Pueblo III TR)
Archeological Site # LA 50,072 (CM 94)(Chaco Mesa Pueblo III TR)
Archeological Site # LA 50,074 (CM 181)(Chaco Mesa Pueblo III TR)
Archeological Site # LA 50,077 (Chaco Mesa Pueblo III TR)
Archeological Site # LA 50,080 (Chaco Mesa Pueblo III TR)

NEW YORK

Schoharie County

Charlotteville vicinity, *Bate-Warner-Truax Farm*, Truax Rd.

OHIO

Muskingum County

Locust Site (33MU160)

PENNSYLVANIA

Delaware County

Wayne, *North Wayne Historic District*, Roughly bounded by Eagle Rd., Woodland Ct., Radnor St., Poplar & N. Wayne Ave.

TENNESSEE

Davidson County

Nashville, *Doctor's Building*, 706 Church St.

Nashville, *Little Sisters of the Poor Home for the Aged*, 1400 18th Ave., South

Sullivan County

Bristol, *First National Bank of Bristol*, 500 State St.

Sumner County

Castalian Springs vicinity, *Brown-Chenault House*, Chenault Lane

Gallatin vicinity, *Oakley, 2243 Nashville Pike*

Washington County

Gray, *Kitzmiller, Martin, House*, US 23, Boon's Creek

TEXAS

Goliad County

Goliad, *Baker, Charles H. and Catherine B., House*, 401 South Commercial St.

WASHINGTON

Spokane County

Upper Kepple Rockshelters (45SP7)

WEST VIRGINIA

Pocahontas County

Mill Point, *McNeel Mill*, US 219

WISCONSIN

Jefferson County

Haight Creek Mound Group (47-Je-38)

Milwaukee County

Milwaukee, *Concordia Historic District (West Side Area MRA)*, Roughly bounded by West State, N. 27th, W. Killbourn Ave. and N. 35th St.

Milwaukee, *Highland Boulevard Historic District (West Side Area MRA)*, W. Highland Blvd. roughly bounded by N. 33rd and N. 29th Sts.

Milwaukee, *McKinley Boulevard Historic District (West Side Area MRA)*, W. McKinley Blvd. between N. 34th & N. 27th Sts.

[FR Doc. 85-16214 Filed 7-8-85; 8:45 am]

BILLING CODE 4310-70-M

National Register of Historic Places; Proposed NHL Boundaries

June 25, 1985.

The National Park Service has been working to establish boundaries for all National Historic Landmarks for which no specific boundary was identified at the time of designation, and therefore, are without a clear delineation of the amount of property involved. The results of such designation make it important that we define specific boundaries for each landmark.

In accordance with the National Historic Landmark program regulations 36 CFR Part 65, the National Park Service notifies owners, public officials and other interested parties and provides them with an opportunity to make comments on the proposed boundaries.

Comments on the proposed boundaries will be received for 60 days after the date of this notice. Please address replies to Jerry L. Rogers, Associate Director, Cultural Resources, and Keeper of the National Register of Historic Places, National Park Service, P.O. Box 37127, Washington, DC 20013–7127, Attention: Chief of Registration (202) 343–9536. Copies of the documentation of the landmarks and their proposed boundaries, including maps may be obtained from that same office.

Carol D. Shull,

Chief of Registration, National Register of Historic Places, Interagency Resources Division.

HURLEY VILLAGE NHL

Hurley, Ulster Co, NY

A. Hurley Village District

Beginning at the point where a southward projection of the western property line of Section 55.008, Block 2, Lot 17 in the Town of Hurley, Ulster County, New York intersects the south side of Main Street (Hurley Street); thence proceeding north along this line and the western edge of 55.008/2/17, and northeast, east and southeast around the perimeter of 55.008/2/17 to the northwestern side of U.S. Route 209; thence proceeding southeast across U.S. Route 209 along a continuation of the eastern line of 55.008/2/17 to the northeastern corner of 55.008/3/43; thence proceeding southeast along the northeast (rear) lines of 55.008/3/43 and 55.008/3/42 and southwest along the southeast line of 55.008/3/42 to the northeast corner of 55.008/3/41; thence proceeding southeast along the northeast (rear) lines of 55.008/3/41 and 55.008/3/40 to the northwest corner of 55.008/3/36; thence proceeding east and south along the north and east lines of 55.008/3/36 and south and southeast along the northeast (rear) line of 55.008/3/34; thence proceeding southwest along the southeast line of 55.008/3/34 to the northern corner of 55.008/3/33; thence proceeding southeast along the northeastern (rear) lines of 55.008/3/33, 55.008/3/32 and 55.008/3/30 to the eastern corner of 55.008/3/30, includng a projection of this line across the driveway of 55.008/3/31 thence proceeding southwest, northwest and southwest along the southeastern side of 55.008/3/30 to the northern corner of 55.008/3/14; thence proceeding southeast along the northeastern side of 55.008/3/14 and northeast along the southeastern side of 55.008/3/13 to a point where a northwestward projection of the northeastern property line of 55.008/4/16 intersects the northwestern side of Millbrook Avenue; thence proceeding southeast along this line and the northeastern side of 55.008/4/16, and southwest along the southeasten side of 55.008/4/16 and along a projection of that line to the southwestern side of Zandhoek Road.

Thence proceeding northwest along the northeastern sides of 55.008/4/5 and 55.008/4/4; thence proceeding northwest along a line across Millbrook Avenue from the northern corner of 55.008/4/4 to the eastern corner of 55.008/3/15; thence proceeding northwest along the northeastern side of 55.008/3/15, southwest along the northwestern sides of 55.008/3/15 and 55.008/3/16, and northwest along the southwestern sides of 55.008/3/29, 55.008/3/28 and 55.008/3/27 to the western corner of 55.008/3/27; thence proceeding northeast along the northwestern sides of 55.008/3/27 and 55.008/3/26 (along the southeastern edge of Schoolhouse Road) to the northern corner of 55.008/3/26; thence proceeding northwest along a line across Schoolhouse Road from the northern corner of 55.008/3/26 to the eastern corner of 55.008/2/5; thence proceeding northwest along the northeastern sides of 55.008/2/5, 55.008/2/4, 55.008/2/3, 55.008/2/2 and 55.008/2/1, and along a continuation of this line across Depot Road and U.S. Route 209 to the eastern corner of 55.008/2/15 (along the southwestern edge of Main Street); thence proceeding southwest and northwest along the southeastern and southwestern sides of 55.008/2/15 to the point of beginning.

B. Hardenbergh House

Beginning at the western corner of Section 55.008, Block 2, Lot 9 in the Town of Hurley, Ulster County, New York; thence proceeding northeast and southeast around the perimeter of 55.008/2/9 to a point where a northwestward projection of the 215-foot long northeastern property line of 55.008/2/9 (which corresponds with the southwestern side of Russell Road); thence proceeding southeast along this line and the southwestern side of Russell Road to the eastern corner of 55.008/2/9; thence proceeding southwest, south, southwest and northwest around the perimeter of 55.008/2/9 to the point of beginning.

C. Matthias Ten Eyck House

Beginning at the northern corner of Section 55.002, Block 2, Lot 17 in the Town of Hurley, Ulster County, New York; thence proceeding southeast approximately 600 feet along the northeastern side of 55.002/2/17 to a tributary of the Esopus Creek; thence proceeding west (upstream) along this tributary to a sharp bend to the south near Hurley Mountain Road; thence proceeding west from this bend to the eastern side of Hurley Mountain Road; thence proceeding north and northeast to the point of beginning.

MESILLA PLAZA NHL

Mesilla, Dona Ana Co, NM

The National Historic Landmark boundary has been drawn to include a total area of six acres that contain Mesilla plaza and those historic structures immediately surrounding the plaza.

The boundary begins at the southeast corner of Calle de Principal and Calle de Parian, and runs south along the east curb of Calle de Principal for approximately 200 feet. Then it proceeds east along the south wall of Building 9 to the west curb of Calle de Guadalupe, then north for approximately 50 feet before turning east and crossing Calle de Guadalupe, thence extending along the south wall of Building 10 for a distance of approximately 150 feet. At this point the boundary turns north and follows along the east wall of Building 10, crossing Calle de Parian and runs along the east wall of Building 11. Turning east at the northeastern corner of Building 11 it continues for approximately 50 feet to the west curb of Calle de Albino, and continues north along the west curb of Calle de Albino for approximately 200 feet. The boundary then turns west for approximately 200 feet to the east curb of Calle de Guadalupe, thence north along the east curb of Calle de Guadalupe for approximately 300 feet. It then turns west, crosses Calle de Guadalupe, running approximately 30 feet behind Building 13, and extends to the west curb of Calle de Principal, a

distance of approximately 200 feet. Here the boundary continues sought along the west curb of Calle de Principal for approximately 280 feet. The boundary then turns west for 300 feet, across vacant ground, to the east curb of Calle de Arroyo, thence along the east curb of Calle de Arroyo for approximately 200 feet where the boundary turns due east, across vacant ground, for approximately 150 feet. Here the boundary turns south for approximately 150 feet, across vacant ground, to the south curb of Calle de Parian. It then continues east along the south curb of Calle de Parian for approximately 150 feet to the southeast corner of Calle de Principal and Calle de Parian, and the beginning point of the boundary.

HUGUENOT STREET HISTORIC DISTRICT

New Paltz, Ulster Co. NY

Beginning at the southern corner of Section 86.033, Block 2, Lot 14 in the Village of New Paltz, Ulster County, New York; thence proceeding northwest to the western corner of 86.033/2/14 and northeast along the northwestern edge of 86.033/2/14, 86.033/2/11 and 86.033/2/1 (the southeastern edge of Hugenot Street) to a point where a projection of the southwestern line of 86.033/1/4 intersects with the southeastern edge of Huguenot Street; thence proceeding northwest along the latter line to the western corner of 86.033/1/4; thence proceeding northeast along the western line of 86.033/1/4, north along the western lines of 86.033/1/5 and 86.033/1/6, west and north along the southern and western lines of 86.033/1/6, north along the western lines of 86.033/1/6 and 86.025/1/12.2, and 200 feet north along the western line of 86.025/1/12.1; thence proceeding east along a line of convenience approximately 30 feet north of the Reformed Church of New Paltz to the western edge of 86.025/2/15 (the eastern edge of Huguenot Street); thence proceeding north along the western edge of 86.025/2/15, and north, east, south, and west around the perimeter of 86.025/2/1 to the northeastern corner of 86.025/2/15; thence proceeding south along the eastern edge of 86.025/2/15 and along a continuation of that line across the driveway of 86.025/2/9; thence proceeding east, south and west around the perimeter of 86.025/2/14 to a point where a projection of the eastern line of 86.033/1/7 intersects with the southern edge of 86.025/2/14; thence proceeding south along the latter line to the southeastern corner of 86.033/1/7, and east, southwest and northwest around the perimeter of 86.033/1/12 to a point where a projection of the southeastern lines of 86.033/2/1 and 86.033/2/14 intersects with the southwestern edge of 86.033/1/12 (on the northeastern edge of North Front Street); thence proceeding southwest along the latter to the point of beginning.

WINONA VILLAGE NHL

Coconino Co, AZ

The east boundary is formed by a barbed wire fence along the section line between Sections 13 and 14. The south boundary is a straight line, 2330 ft. long, that extends westward from the quarter section corner, approximately the intersection of the fence line with a dirt road, to U.S. Highway 66. This generally follows the dirt road for most of its length. The west boundary is a straight line, 2600 ft. long, that is 330 ft. west of and parallel to the Forest boundary. The north boundary is an east-west line that mostly corresponds to the upper edge of a cinder cone.

RABBIT EARS NHL (CLAYTON COMPLEX)

Clayton, Union Co, NM

The Rabbit Ears (Clayton Complex) National Historic Landmark consists of three camp sites (McNees' Crossing, Turkey Creek Camp and Rabbit Ears Camp) and two natural features (Rabbit Ears Mountains and Round Mound) of the Santa Fe Trail. The campsite are bound together by the remains of the Santa Fe Trail and form one elongated parcel, while the two natural features consist of two separate parcels south of the campsites and trail.

Parcel #1, is shaped like a parallelogram running from the Oklahoma-New Mexico border in a southwesterly direction, across three USGS maps. Within the parallelogram the actual NHL boundary is delineated in blue pen. The three campsites are bound together by a corridor centered on the Santa Fe Trail (as it is indicated on the enclosed USGS maps). The boundaries of the corridor run parallel to the Trail, at a distance of 150' on either side of it. This corridor becomes thicker in the area of the three campsites. In the area of McNees Crossing (Moses Quad) the corridor is expanded to include both segments of the Cimarron Cutoff. In the area of the Turkey Creek Camp, along the Almos Creek (McLaughlin Bridge & Bible Top Butte Quads) the northern part of the boundary runs parallel to the Santa Fe Trail, while the southern part of the boundary follows the creek botton area of Alamos Creek, which served the travelers as a stopping place. An arbitrary line was used for the southern boundary of the Turkey Creek Camp because there was not a convenient contour line to utilize and the on-site inspection selected this area as that area most likely to have served as the camping site. The expanded boundary for the Rabbit Ears Creek Camp has its northern boundary paralleling the Santa Fe Trail, and its southern boundary consisting of the 5600' contour line. These north and south boundaries and the arbitrary west and east lines enclose a broad flat valley which encloses the general camp site area of the Rabbit Ears Creek Camp. (see Mount Dora Quad).

Parcel #2, encloses the prominent double-peaked Rabbit Ear Mesa (Bible Top Butte & Rabbit Ear Mountain Quads). Starting at Point E the Boundary runs southeast to Point F, thence straight south to Point G. From Point G the Boundary goes southwest to Point H, thence straight west to Point I. The Boundary from Point I follows State Highway 370 to Point J. From Point J the boundary runs northeast to Point K and thence due east to Point E. This boundary is to enclose those parts of Rabbit Ear Mesa which are considered significant within the most succinct boundary.

Parcel #3, Mount Clayton (Round Mound), consists of Sections 2 and 3 of T. 26 N., R. 31 E., and Sections 34 and 35 of T. 27 N., R. 31 E.

[FR Doc. 85-16215 Filed 7-8-85; 8:45 am]
BILLING CODE 4310-70-M

Intention To Negotiate Concession Permit; Craftsmen's Guild of Mississippi, Inc.

Pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), public notice is hereby given that sixty (60) days after the date of publication of this notice, the Department of the Interior, through the Director of the National Park Service, proposes to negotiate a concession permit with Craftsmen's Guild of Mississippi, Inc., authorizing it to continue to provide sales, exhibits, workshops, and demonstrations of Mississippi crafts facilities and services for the public on the Nathez Trace Parkway, for a period of three (3) years from January 1, 1986, through December 31, 1988.

This permit renewal has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.

The foregoing concessioner has performed its obligations to the

satisfaction of the Secretary under an existing permit which expires by limitation of time on December 31, 1985, and therefore, pursuant to the Act of October 9, 1965, as cited above, is entitled to be given preference in the renewal of the permit and in the negotiation of a new permit as defined in 36 CFR 51.5.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before the sixieth (60th) day following pubication of this notice to be considered and evaluated.

Interested parties should contact the Regional Director, Southeast Region, 75 Spring Street, SW., Atlanta, Georgia 30303, for information as to the requirements of the proposed permit.

Dated: June 26, 1985.

Robert L. Deskins,

Acting Regional Director, Southeast Region.

[FR Doc. 85-16350, Filed 7-8-85; 8:45 am]

BILLING CODE 4310-70-M

Intention To Negotiate Concession Contract; White Sands Concession Inc.

Pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), public notice is hereby given that sixty (60) days after the date of publication of this notice, the Department of the Interior, through the Director of the National Park Service, proposes to negotiate a concession contract with White Sands Concession, Inc., authorizing it to continue to provide food and beverage, recreational equipment rental, and merchandising facilities and services for the public at White Sands National Monument, New Mexico, for a period of fifteen (15) years from October 1, 1985, through September 30, 2000.

This proposed contract requires/authorizes a construction and improvement program. The construction and improvement program required/authorized was previously addressed in the National Environmental Policy Act document, Final Environmental Statement, October 14, 1975, that was prepared in conjunction with the Master Plan for White Sands National Monument.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing contract which will expire by limitation of time on September 30, 1985, and therefore, pursuant to the Act of October 9, 1965, as cited above, is entitled to be given preference in the renewal of the contract and in the negotiation of a new contract as defined in 36 CFR, § 51.5.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Interested parties should contact the Superintendent, White Sands National Monument, P.O. Box 458, Alamogordo, New Mexico, 88310, telephone number (505) 437-1058, for information as to the requirements of the proposed contract.

Donald A. Dayton,

Acting Regional Director, Southwest Region.

[FR Doc. 85-16346 Filed 7-8-85; 8:45 am]

BILLING CODE 4310-70-M

DEPARTMENT OF JUSTICE

Pollution Control Consent Judgment; Service Hardware and Drilling Co.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on June 24, 1985 a proposed Consent Judgment in *United States* v. *David L. Hamilton, doing business as Service Hardware And Drilling Company*, Civil Action No. 84-244-BLG, was lodged with the United States District Court for the District of Montana. The complaint filed by the United States alleged a violation of the Clean Water Act by the defendant at a facility located in Big Horn County, Montana. The complaint sought injunctive relief to require the defendant to obtain and comply with a Clean Water Act permit and to recover civil penalties for past violations.

The defendant has obtained the required Clean Water Act permit, obviating the need for injunctive relief. The Consent Decree provides that the defendant will pay a civil penalty of $12,500 in settlement of the claims alleged in the complaint.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *David L. Hamilton, doing business as Service Hardware And Drilling Company*, D.J. Ref. 90-5-1-1-2192.

The proposed Consent Judgment may be examined at the office of the United States Attorney, 5043 Federal Building, 26th Street and 3rd Avenue, North, Billings, Montana 59103, and at the Region VIII Office of the Environmental Protection Agency, 1860 Lincoln Street, Denver, Colorado 80295. Copies of the Consent Judgment may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, NW., Washington, D.C. 20530. A copy of the proposed Consent Judgment may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 85-16344 Filed 7-8-85; 8:45 am]

BILLING CODE 4410-01-M

Attorney General's Commission on Pornography; Open Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, the Department of Justice announces the following meetings and hearings of the Attorney General's Commission on Pornography.

Meeting:

Date and Time: July 23, 1985, 7:30 p.m.—10:30 p.m., C.D.T.

Place: U.S. Courthouse, 219 South Dearborn Street, Room 2502, Chicago, Illinois 60604.

Status: Open to the public.

Matters to be considered: (1) General discussion of issues and methodology to be utilized and (2) Any other relevant matters.

Hearing:

Date and Time: July 24, 1985, 8:30 a.m.—7:30 p.m., C.D.T.

Place: U.S. Courthouse—Ceremonial Courtroom, 219 South Dearborn Street, Room 2444, Chicago, Illinois 60604.

Status: Open to the public.

Matters to be considered: 8:30 a.m., Opening of Second Public Hearing—Welcoming remarks; 8:40 a.m.—12:30 p.m., Testimony of witnesses and examination by Commissioners; 1:30 p.m.—7:30 p.m., Testimony of witnesses and examination by Commissioners.

Meeting:

Date and Time: July 24, 1985, 8:00 p.m.—10:00 p.m., C.D.T.

Place: U.S. Courthouse, 219 South Dearborn Street, Room 2502, Chicago, Illinois 60604.

Status: Open to the public.

Matters to be considered: (1) General discussion of issues and methodology to be utilized and (2) Any other relevant matters.

Hearing:

Date and Time July 25, 1985, 8:30 a.m.—7:30 p.m., C.D.T.

Place: U.S. Courthouse—Ceremonial Courtroom, 219 South Dearborn Street, Room 2444, Chicago, Illinois, 60604.

Status: Open to the public.

Matters to be considered: 8:30 a.m.—12:00 noon, Testimony of witnesses and examination by Commissioners; 1:30 p.m.—7:30 p.m., Testimony of witnesses and examination by Commissioners.

The meetings and hearings will be open to the public, and written comments may be submitted regarding relevant issues. Approximately 30 seats will be available for the public (including media representatives) on a first-come, first-served basis at the meetings on July 23 (7:30 p.m.—10:30 p.m., C.D.T.) and July 24 (8:00 p.m.—10:00 p.m., C.D.T). Approximately 150 seats will be available for the public (including 40 seats reserved for media representatives) on a first-come, first-served basis at the hearings in the Ceremonial Courtroom on July 24 and July 25, 1985.

Copies of minutes will be available upon request, at the actual cost of duplication, 30 days after the final hearing on July 25, 1985.

Contact person for more information: Alan E. Sears, Executive Director, Attorney General's Commission on Pornography, Room 1018, HOLC Building, Department of Justice, 320 First Street, NW., Washington, D.C. 20530, (202) 724-7837.

Henry Hudson,

Commission Chairman.

July 1, 1985.

[FR Doc. 85-16305 Filed 7-8-85; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

[Docket No. 83-36]

Hydromorphone; Grant of Registration

On May 10, 1983, Mallinckrodt, Inc., applied to the Drug Enforcement Administration (DEA) for registration pursuant to 21 U.S.C. 823(a) as a bulk manufacturer of hydromorphone, a basic class of Schedule II controlled substance. Pursuant to 21 CFR 1301.43(a), notice of this filing was published in the **Federal Register**, 48 FR 50806, on November 3, 1983. The notice advised that any registered bulk manufacturer of hydromorphone and any other person who then had pending an application for similar registration could file written comments or objections to the granting of Mallinckrodt's application and could request a hearing based on its objections to Mallinckrodt's registration.

Knoll Pharmaceutical Company (Knoll) filed objections to Mallinckrodt's application and requested a hearing. Knoll is a registered bulk manufacturer of hydromorphone and is therefore entitled to object to the granting of Mallinckrodt's application and to request a hearing on its objections. Accordingly, this matter was placed on the docket of Administrative Law Judge Francis L. Young.

There were four participants or parties in this proceeding: The applicant, Mallinckrodt; the objector or opposer, Knoll; the DEA staff; and the Antitrust Division of the Department of Justice. At a preliminary hearing session held on February 9, 1984, procedures were settled on and a schedule was fixed. In a statement filed on February 24, 1984, Knoll set out four objections or issues:

(1) Whether granting Mallinckrodt's application is inconsistent with the public interest in permitting the maintenance of effective controls against diversion of hydromorphone, and any controlled substance compounded therefrom, into other than legitimate channels, because of certain results which allegedly would follow from Mallinckrodt's registration—(the Diversion issue).

(2) Whether granting Mallinckrodt's application is inconsistent with the public interest in maintaining effective controls against diversion of hydromorphone by limiting the number of manufacturers as long as there are adequately competitive conditions—(the Competition issue).

(3) Whether granting Mallinckrodt's application is inconsistent with United States obligations under international treaties, conventions or protocols—(the International issue).

(4) Whether granting Mallinckrodt's application is inconsistent with the public interest in the promotion of technical advances—(the Technical Advances issue).

The testimony of all witnesses on direct examination was prepared and submitted in written narrative form. Thereafter, evidentiary hearing sessions were held before Judge Young on May 1, 2 and 3, 1984, in Washington, D.C. At these three sessions the witnesses were cross-examined and a number of exhibits were put in evidence. Subsequently, each participant submitted proposed findings of fact, conclusions of law and written arguments or briefs in support of their respective positions. In its post-hearing brief, Knoll did not mention its Technical Advances issue, and no argument was submitted in support of it. The Administrative Law Judge accordingly considered it to have been abandoned.

On February 5, 1985, the Administrative Law Judge issued his opinion and recommended ruling, findings of fact, conclusions of law and decision in this matter. Knoll filed written exceptions to that document pursuant to 21 CFR 1316.66. Mallinckrodt then filed its response to Knoll's exceptions. These written exceptions and responses were made part of the formal record. The entire record was submitted to the Acting Administrator by the Administrative Law Judge on April 3, 1985, pursuant to 21 CFR 1316.65. The Acting Administrator had considered this record in its entirety and, pursuant to 21 CFR 1316.67, hereby issues his final order in this matter, based upon findings of fact and conclusions of law as hereinafter set forth.

The Administrative Law Judge found that hydromorphone is a Schedule II narcotic controlled substance. 21 CFR 1308.12(b)(1). As such, by definition, hydromorphone is a drug which has a currently accepted medical use in treatment in the United States which has a high potential for abuse and which, when abused, produces severe psychological and physical dependence. 21 U.S.C. 812(b)(2). As a Schedule II narcotic controlled substance, hydromorphone is subject to quotas, 21 U.S.C. 826; 21 CFR Part 1303; transfers pursuant to official order forms, 21 U.S.C. 828, 21 CFR Part 1305; non-refillable written prescriptions, 21 U.S.C. 829(a), 21 CFR 1306.11-15; enhanced reporting requirements, 21 CFR 1304.31, 32, 38,39, 40, and 41; enhanced security requirements, 21 CFR 1301.72(a).

Since 1935, Knoll has been the sole manufacturer of bulk hydromorphone in the United States. Knoll is currently the only manufacturer of solid, oral dosage forms of hydromorphone. Knoll sells its hydromorphone formualtions under the trademark "Dilaudid". Dilaudid is the subject of high illicit demand and diversion pressure at all levels of the legitimate distribution chain, diversion of Dilaudid takes place primarily at the retail level through overprescribing by unscrupulour physicians and dispensing pharmacists with similarly unprofessional motives.

Knoll has experience in manufacturing several dosage forms from Schedule II narcotid raw materials, including codeine, hydrocodone, hydromorphone, meperidine, and morphine. From 1978 to 1981 Knoll assisted Roxane Laboratories, Inc. (Roxane) in developing its own generic hydromorphone formulations. Knoll did not raise diversion or other objections at that time. DEA, in 1981, granted Roxane a procurement quota for hydromorphone. Thereafter, Knoll refused to supply hydromorphone to Roxane. Having developed hydromorphone formulations with Knoll's assistance, and having been subsequently denied a supply of bulk hydromorphone by Knoll, Roxane

resorted to Mallinckrodt as a supplier of its future hydromorphone requirements.

Mallinckrodt has experience, spanning several decades, in manufacturing more than 15 Schedule II substances and has an excellent record for cooperating with DEA in prevention diversion. Roxane has experience in manufacturing 38 Schedule II products utilizing five different Schedule II substances and has never had a security violation or diversion. Roxaine intends to formulate and manufacture hydromorphone formulations in the same facilities and using the same security precautions and procedures that it has successfully used in the formulation of the other Schedule II products.

Less than 1% of all Roxane's sales of Schedule II products are directed to retail pharmacies. Instead, Roxane focuses on hospital or hospice pharmacies and to wholesalers who supply hospitals. With respect to hydromorphone, Roxane would target that same market as opposed to retail pharmacies.

Knoll alleges that should Mallinckrodt be granted a registration to manufacture bulk hydromorphone, the result would be increased diversion of that substance. The Administrative Law Judge found that the diversion risk from illicit prescriptions and theft at retail pharmacies involves tablets and bottles of tablets. Tablets cause less suspicion when illicitly prescribed and they are more easily concealed than are injectables and other dosage forms. Roxane's principal hydromorphone products will be an oral solution and tablets contained in a reverse number card. Both of these products are directed at hospitals and at oncologists who are generally on hospital staffs. These products are rarely sold to retail pharmacies.

Judge Young stated that although certain physicians present a high risk of diversion, Knoll did not present any evidence that oncologists on hospital staffs present this same level of risk. Sales to hospitals present much lower diversion concerns than do sales to retail pharmacies.

Knoll contends that this increased supply to hospitals would result in increased internal pilferage. The risk of hospital theft can be minimized with appropriate security and drug accountability procedures within hospitals. Roxane's proposed reverse numbered blister package represents such a drug accountability procedure. Knoll has not shown sufficient evidence that a serious risk of increased hospital diversion would result by virtue of Mallinckrodt's registration.

Knoll alleges that the registration of Mallinckrodt would result in an increase in supply of hydromorphone, thereby causing the risk of diversion to increase. Through the use of quotas, DEA regulates the amount of hydromorphone that can be manufactured and placed on the market. DEA, in setting the aggregate production quota for hydromorphone, must provide for the legitimate medical, scientific, research and industrial needs of the United States. 21 U.S.C. 826, 21 CFR Part 1303. In establishing quotas, DEA's goal is to set a quota that adequately fulfills legitimate demand without either underproduction, which fails to meet legitimate needs, or overproduction, which creates a pool of excess material that may be subject to diversion. Quotas are not fixed, unvarying limits. If legitimate medical demand cannot be met without a change in the aggregate production quota, then DEA increases the aggregate production quota. Where there is no increase in the total legitimate demand but a new firm takes sales from those of an existing manufacturer, then DEA decreases the latter's quota by the amount of such sales.

Additionally, in 1982, DEA placed hydromorphone under disposal quotas which have added to DEA's control over this drug. Disposal quotas, by which DEA limits total disposals by formulators under an established quota, are effective measures to control diversion. Knoll has not shown that these measures would be less effective if Mallinckrodt were registered.

A further argument advanced by Knoll is that the registration of another bulk manufacturer of hydromorphone and the entrance of new formulators of that substance will result in an increased number of shipments of the drug all along the distribution chain and, thus, an increased risk of diversion. In 1981, 65% of all thefts reported by manufacturers and distributors were of drugs "lost-in-transit". Knoll contended that the greater the number of shipments of controlled substances, the greater the potential risk of diversion through in-transit loss. Judge Young reasoned that although there may be some additional risk of in-transit diversion, a certain amount of risk must necessarily be tolerated to get a medically needed drug to the legitimate market.

Knoll's final contention is that there would be increased diversion due to interference with Knoll's existing efforts to control diversion. Knoll has voluntarily undertaken several measures, beyond those required by law, to identify excessive purchases of its hydromorphone and to control diversion once it is identified. These measures include development and utilization of an internal computer system to track excessive purchases by wholesalers, limitation on exports and on sales to certain geographic areas where diversion is suspected, and subscription to the Drug Distribution Data ("DDD") System in order to track excess purchases at the retail level. Registration of Mallinckrodt would not interfere with the comprehensiveness of Knoll's computer tabulations, as long as Roxane supplied DEA with similar tabulations. Knoll currently subscribes to the DDD system which permits it to detect large purchases within certain geographic "cells". Roxane has indicated that it, too, would subscribe to the DDD system if requested to do so by DEA. Judge Young found that while the addition of a new formulator might preclude Knoll itself from tracking all excess purchases of hydromorphone, it would not prevent DEA from aggregating data from Knoll, Roxane and/or the ARCOS system to detect excess purchases.

The burden of proof is on the objecting party, at whose request a hearing is held, to show why the application should not be granted, and to produce such evidence as they may have for consideration by the Administrative Law Judge and the Acting Administrator. *McNeilab, Inc.*, Docket No. 78–13, Opinion at p. 16. It is up to the opposers to show by a preponderance of the evidence that the objections or issues they have raised should preclude the granting of an application. The Administrative Law Judge concluded that Knoll did not show, by a preponderance of the evidence, that the registration of Mallinckrodt as a bulk manufacturer of hydromorphone, under all of the facts and circumstances relevant to this application, would be inconsistent with the public interest, either because Mallinckrodt itself has failed to maintain effective controls against diversion or that the registration of Mallinckrodt would pose an unacceptable increase in the risk of diversion of hydromorphone.

Judge Young next addressed the competition issue. Knol alleged that granting Mallinckrodt's application would not reduce the price of hydromorphone. Judge Young concluded that that argument was irrelevant. The granting of such an application does not require that it result in a lower price for any product. Failure to result in a lower price is not, in and of itself, inconsistent with the public interest.

Finally, the Administrative Law Judge addressed the issue of consistency with United States international obligations. 21 U.S.C. 823(a) provides that the "Attorney General shall register an applicant to manufacture controlled substances in Schedule I or II if he determines that such registration is consistent with the public interest and with United States obligations under International treaties, conventions, or protocols in effect on May 1, 1971."

Knoll maintained that the Single Convention on Narcotic Drugs, 1961, requires DEA to deny Mallinckrodt's application since Knoll presently has more capacity than is needed in the United States to produce a total amount of hydromorphone required for this country's legitimate needs. Therefore, Knoll argues that no additional manufacturer of hydromorphone should be registered.

Judge Young concluded that Knoll read more into the provisions of the Convention than is contained therein. Article 29(1), Paragraph 2(b) requires merely that signatory nations "control under license [sic] the establishments and premises in which such manufacture may take place." The commentary to the provision does suggest that the manufacture of drugs should be restricted to as small a number of establishments and premises as is practicable. Comment 6. Judge Young stated however, that what the commentators "suggested" may be one way of accomplishing what the Convention requires. The text of the Convention itself though does not require this course to be taken. The text requires merely that control be exercised by licensing. *See, McNeilab, Inc.*, Docket No. 78-13, Opinion, pp. 29-35.

Based on the foregoing reasons, the Administrative Law Judge recommended that the registration of Mallinckrodt be granted. After reviewing the entire record, including the exceptions filed by Knoll, the Acting Administrator adopts the recommended ruling, findings of fact, conclusions of law and decision of the Administrative Law Judge in their entirety. The Acting Administrator does not believe that the registration of Mallinckrodt would endanger the public health and safety. The risk of additional diversion is slight given Mallinckrodt's exceptional record against diversion, and given Roxane's intended methods of production and distribution. The Acting Administrator further concludes that registration of Mallinckrodt would be in the public interest since it would increase competition and thereby benefit the consumer.

The objections to the granting of Mallinckrodt's application raised by Knoll, based upon the premise that the application is contrary to the public interest, have been considered by the Acting Administrator and have been rejected. Accordingly, the Acting Administrator of the Drug Enforcement Administration pursuant to the authority vested in him by 21 U.S.C. 823 and 28 CFR 0.100(b) hereby orders that the application of Mallinckrodt, Inc. to be registered as a bulk manufacturer of hydromorphone under the Controlled Substances Act be, and it hereby is, granted.

Dated: July 3, 1985.

John C. Lawn,

Acting Administrator.

[FR Doc. 85-16267 Filed 7-8-85; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-15, 892]

Alta Products Corp., Wilkes-Barre, PA; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on April 10, 1985 in response to a worker petition received on April 1, 1985 which was filed by the United Textile Workers of America Local 998 on behalf of workers at Alta Products Corporation, Wilkes-Barre, Pennsylvania. An active certification covering the petitioning group of workers remains in effect (TA-W-14, 586). Consequently further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, D.C. this 27th day of June 1985.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 16277 Filed 7-8-85; 8:45 am]

BILLING CODE 4510-30-M

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period June 24, 1985-June 28, 1985.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-15,827; Halomet, Inc., Masontown, PA

TA-W-15,816; Jomac Products, Inc., Knox, IN

TA-W-15,834; Tuscarora Yarns, Inc., J.M. Odel Plant, Bynum, NC

TA-W-15,860; Algro Knitting Mills, Inc., Milltown, NJ

TA-W-15,861; Avondale Mills, Sycamore, AL

In the following cases the investigation revealed that criterion (3) has not been met for the reasons specified.

TA-W-15,863; Code-A-Phone Corp., Louisville, KY

Separations from the subject firm resulted from a transfer of production to another domestic facility.

TA-W-15,811; Colt Industries, Inc., Pratt & Whitney Machine Tool Div., West Hartford, CT

In the investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-15,943; Cooperativa Metropolitina de Consumo, Bayamon, PR

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

Affirmative Determinations

TA-W-15,788; World Tableware International, Inc., Wallingford, CT

A certification was issued covering all workers of the firm separated on or after April 1, 1984.

TA-W-15,837; Eaton Corp., Axle Brake Div., Humboldt, TN

A certification was issued covering all workers of the firm separated on or after November 1, 1984.

TA-W-15,865; Miami Footwear Corp., Miami, FL

A certification was issued covering all workers of the firm separated on or after February 1, 1985.

TA-W-15,822; U.S. Steel Corp., Milwaukee Sales Office, Milwaukee, WI

A certification was issued covering all workers of the firm separated on or after February 22, 1984 and before July 1, 1984.

TA-W-15,832; Modern Manufacturing Co., Inc., Timonium, MD

A certification was issued covering all workers of the firm separated on or after February 28, 1984 and before September 1, 1984.

TA-W-15,852; Miniscribe Corp., Longmont, CO

A certification was issued covering all workers of the firm separated on or after July 1, 1984.

TA-W-15,840; Kerr-McGee Corp., Quivira Mining Corp., Ambrosia Lake, NM

A certification was issued covering all workers of the firm separated on or after February 23, 1984.

TA-W-15,829; Kayser Roth Mens Apparel, Inc., Timonium, MD

A certification was issued covering all workers of the firm separated on or after February 28, 1984 and before July 1, 1984.

TA-W-15,958; Code-A-Phone Corp., Clackamas, OR

A certification was issued covering all workers of the firm separated on or after April 22, 1984 and before May 1, 1985.

TA-W-15,845; Sprague Electric Co., Hillsville, VA

A certification was issued covering all workers of the firm separated on or after September 1, 1984.

TA-W-15,839; Freeman Shoe Co., Division of U.S. Shoe Co., Emmitsburg, MD

A certification was issued covering all workers of the firm separated on or after October 1, 1984 and before April 1, 1985.

TA-W-15,842; Mission Furniture Manufacturing Co., Los Angeles, CA

A certification was issued covering all workers of the firm separated on or after July 1, 1984 and before June 15, 1985.

TA-W-15,851; Mad John Sportswear, Inc., Hollidaysburg, PA

A certification was issued covering all workers of the firm separated on or after February 13, 1984 and before July 31, 1984.

I hereby certify that the aformentioned determinations were issued during the period June 24, 1985–June 28, 1985. Copies of these determinations are available for inspection in Room 6434, U.S. Department of Labor, 601 D Street, N.W., Washington, D.C. during normal business hours or will be mailed to persons who write to the above address.

Dated: July 2, 1985.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 85-16275 Filed 7-8-85; 8:45 am]

BILLING CODE 4510-30-M

Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than July 19, 1985.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than July 19, 1985.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, N.W., Washington, D.C. 20213.

Signed at Washington, D.C. this 28th day of June 1985.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
Amax Chemical Corp. (USWA)	Carlsbad, NM	6/20/85	6/17/85	TA-W-16,125	Potash.
Boise Cascade Corp. Plywood & Small Log Div. (Brotherhood of Carpenters).	Kettle Falls, WA	6/25/85	6/18/85	TA-W-16,126	Plywood & Lumber & other wood products.
Champion International Corp. (Brotherhood of Carpenter)	Libby, MT	6/25/85	6/18/85	TA-W-16,127	Lumber Plywood & other wood products.
Chicago Pneumatic Tool Co. (IAMAW)	Utica, NY	6/25/85	6/19/85	TA-W-16,128	Pneumatic & rotary tools.
(The) Great Western Sugar Co. (workers)	Sterling, CO	6/20/85	6/12/85	TA-W-16,129	Process sugar beets.
Hammersley Ceramics, A Div. of Retail Service Inc. (wkrs)	Santa Ana, CA	6/20/85	6/18/85	TA-W-16,130	Kitchen & bath ceramics, housewares.
J.T. Koltis Enterprise (workers)	Bronx, NY	6/20/85	6/17/85	TA-W-16,131	Ladies footwear.
Monsanto Fibers & Intermediates (wkrs)	Pensacola, FL	6/25/85	6/20/85	TA-W-16,132	Research & development project—nylon fibers manufacturing nylon fibers.
Texas Apparel Co. (workers)	El Paso, TX	6/25/85	6/20/85	TA-W-16,133	Office workers.
W.I. Forest Products (Brotherhood of Carpenter)	Thompson Falls, MT	6/25/85	6/18/85	TA-W-16,134	Lumber & other wood products.
West Orange Mfg. Co./Lady Gilda, Inc. (ILGWU)	West Orange, NJ	6/7/85	6/3/85	TA-W-16,135	Lingerie & childrens dresses.

[FR Doc. 85-16276 Filed 7-8-85; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Astronomical Sciences; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Science Foundation announces the following meeting:

Name: Subcommittee on Large Optical/Infrared Telescopes.

Date and time: July 25, 9:00 AM-5:00 PM—July 26, 9:00 AM-12:00 Noon.

Place: Room 543, National Science Foundation, 1800 G Street, NW., Washington, D.C.

Type of meeting: Open.

Contact person: Dr. Laura P. Bautz, Director, Division of Astronomical Sciences, Room 615, National Science Foundation, Washington, D.C. 20550 202/357-9488.

Summary minutes: May be obtained from the contact person at the above address.

Purpose of subcommittee: In the light of recent technological advances and large telescopes being planned in the U.S. and elsewhere, the subcommittee is asked to examine the scientific rationale and current plans and to advise on appropriate future directions for the Foundation's support of technology development and planning for a large optical/infrared telescope for the remainder of the decade.

Agenda:

Thursday, July 25

9:00 AM-5:00 PM: Discussion of charge to subcommittee, scope of subcommittee activities, and time scale for subcommittee actions.

Friday, July 26

9:00 AM-12:00 Noon: Planning for future meetings, assignment of action items.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 85-16221 Filed 7-8-85; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Panel for the Decontamination of Three Mile Island Unit 2

Notice is hereby given pursuant to the Federal Advisory Committee Act that the Advisory Panel for the Decontamination of Three Mile Island Unit 2 (TMI-2) will be meeting on July 18, 1985 from 7:00 p.m. to 10:00 p.m. at the Lancaster Council Chambers, Public Safety Building, 201 N. Duke Street, Lancaster, PA 17603. The meeting will be open to the public.

At this meeting the Panel will receive a general update on the progress of the cleanup from General Public Utilities Nuclear Corporation, the licensee. The licensee will also provide a detailed discussion of the reactor pressure vessel defueling program. The staff of the U.S. Nuclear Regulatory Commission will provide the Panel with the results of a recent staff review of health effects studies conducted in the vicinity of TMI-2 since the March 28, 1979 accident. The U.S. Department of Energy will discuss the shipment of fuel from the TMI-2 site. The Panel will also hold a planning session to identfy and schedule future topics for Panel discussion.

Further information on the meeting may be obtained from Dr. Michael T. Masnik, Three Mile Island Program Office, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone 301/492-7466.

Dated: July 2, 1985.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 85-16306 Filed 7-8-85; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

SES Performance Review Board Members

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: Notice is given of the names of members of the reconstituted Performance Review Board for OPM.

DATE: July 9, 1985.

FOR FURTHER INFORMATION CONTACT: Jerry Burchard, Administration Group, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415, (202) 632-9402.

SUPPLEMENTARY INFORMATION: Section 4314(c) (1) through (5) of title 5, United States Code, requires each agency to establish, in accordance with our regulations, one or more Senior Executive Service performance review boards. The board(s) will review and evaluate the initial appraisal of a senior executive's performance by the supervisor and make recommendations to the appointing authority relating to the performance of these executives.

U.S. Office of Personnel Management.

Loretta Cornelius,

Acting Director.

Members of the reconstituted Performance Review Board for OPM are—

1. John W. Fossum [Chairman], Assistant Director for Performance Management, Workforce Effectiveness and Development Group.

2. Steven R. Cohen [Vice-Chairman], Regional Director, Chicago Region.

3. Jean M. Barber, Assistant Director for Pay and Benefits Policy, Compensation Group.

4. Carlos F. Esparza, Assistant Director for Washington Area Examining Operations, Staffing Group.

5. William E. Flynn, III, Regional Director, Atlanta Region.

6. William B. Davidson, Jr., Chairman, Federal Prevailing Rate Advisory Committee.

7. Edward T. Rhodes, Deputy Associate Director, Administration Group.

8. Hohn J. Lafferty, Regional Director, New York Region.

9. William M. Hunt, Associate Director, Administration Group.

10. Claudia Cooley [ad hoc member], Deputy Associate Director, Compensation Group.

11. Raymond J. Sumser ad hoc member], Director of Civilian Personnel, Department of the Army.

[FR Doc. 85-16210 Filed 7-8-85; 8:45 am]

BILLING CODE 6325-01-M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Recommendations for Amendment of the Columbia River Basin Fish and Wildlife Program; Opportunity To Comment

AGENCY: Pacific Northwest Electric Power and Conservation Planning Council.

ACTION: Columbia River Basin Fish and Wildlife Program: Request for Recommendations for Amendment.

SUMMARY: In this notice, the Pacific Northwest Electric Power and Conservation Planning Council ("the Council") requests submission of recommendations for amendment of its Columbia River Basin Fish and Wildlife Program, announces the availability an application form, and seeks comment on amendment processes.

DATES: Comments on amendment processes must be received in the Council's central office by 5 p.m. Tuesday, September 3, 1985. Recommendations for amendment must be received in the Council's central office by 5 p.m. Monday, December 16, 1985. Recommendations not received by that time will not be accepted.

ADDRESS: 850 Southwest Broadway, Suite 1100, Portland, Oregon 97205.

FOR FURTHER INFORMATION CONTACT: Janie Pearcy, for copies of application forms; Janis Chrisman, Director of the Division of Fish and Wildlife with questions; both at 850 Southwest Broadway, Suite 1100, Portland, Oregon 97205, (503) 222-5161.

SUPPLEMENTARY INFORMATION: On November 15, 1982, the Council adopted a program designed to protect, mitigate and enhance fish and wildlife affected by the development and operation of hydroelectric projects in the Columbia River Basin. It adopted the program in accordance with its authority under the Pacific Northwest Electric Power Planning and Conservation Act, 16 U.S.C. 839 *et seq.* ("The Northwest Power Act"). The Council amended the Program on October 10, 1984. It has indicated that it would receive applications for further amendment of the program on December 16, 1985, and will act on those applications by December 16, 1986.

The Council hereby requests submission of recommendations for further amendment of the program. Such recommendations must be received in the Council's central office, 850 Southwest Broadway, Suite 1100, Portland, Oregon 97205, by 5 p.m. on Monday, December 16, 1985. The Council will not consider recommendations unless they are received by that date and submitted on the Council's amendment application form.

Recommendations may be submitted by Indian tribes, federal and state fish and wildlife agencies, water and land management agencies, electric power producing agencies and their customers, and members of the public. To be accepted for consideration by the Council, the recommendations must meet the standards established by the Northwest Power Act. Section 4(h)(2) of that Act states that recommendations must be for:

1. Measures which can be expected to be implemented by the Bonneville Power Administration and other Federal agencies to protect, mitigate, and enhance fish and wildlife, including related spawning grounds and habitat, affected by the development and operation of any hydroelectric project on the Columbia River and its tributaries.

2. Objectives for the development and operation of hydroelectric projects on the Columbia River and its tributaries in a manner designed to protect, mitigate and enhance fish and wildlife; and

3. Fish and wildlife management coordination and research and development (including funding) which, among other things, will assist protection, mitigation, and enhancement of anadromous fish at, and between, the Pacific Northwest's hydroelectric dams.

Section 4(h)(3) of the Act further provides that "[a]ll recommendations shall be accompanied by detailed information and data in support of the recommendations."

To be adopted by the Council, the Act requires that recommendations: (1) Protect, mitigate and enhance fish and wildlife affected by the development, operation and management of hydroelectric facilities on the Columbia River and its tributaries, while assuring the Pacific Northwest an adequate, efficient, economical and reliable power supply (section 4(h)(5)); (2) complement the existing and future activities of the Federal and the region's State fish and wildlife agencies and appropriate Indian tribes (section 4(h)(6)(A); (3) be based on , and supported by, the best available scientific knowledge (section 4(h)(6)(B)); (4) utilize, where equally effective alternative means of achieving the same sound biological objective exist, the alternative with the minimum economic cost (section 4(h)(6)(C)); (5) be consistent with the legal rights of appropriate Indian tribes in the region (section 4(h)(6)(D)); and (6) in the case of anadromous fish—

— Provide for improved survival of such fish at hydroelectric facilities located on the Columbia River system, (Section 4(h)(6)(E)(i)); and

—Provide flows of sufficient quality and quantity between such facilities to improve production, migration, and survival of such fish as necessary to meet sound biological objectives (section 4(h)(6)(E)(ii)).

1. Council Concerns

The Council is concerned that submission of a large number of amendment applications may divert energies away from important implementation and planning activities. The Council's Columbia River Basin Fish and Wildlife Program already contains approximately 150 action items to be implemented by the end of fiscal year 1989. The Program five-year action plan (in effect through the end of 1989) contains a detailed schedule for implementation of top-priority projects, including major capital construction efforts. Moreover, the total program is expected to cost an estimated $650–$740 million over a 20-year period. In addition, the Program has been amended fairly recently. Further, the Council, major fish and wildlife managers and other interested parties currently are involved in several major planning activities related to site ranking, designation of protected areas and development of goals and objectives for anadromous fish mitigation and enhancement. Past experience has shown that the Program amendment process requires an extensive commitment of time and energy, both by the Council and by those proposing amendments.

As a result, the Council prefers that any amendment application focus on refining high-priority measures and action items already in the program rather than development of new projects.

2. Instruction on Applications

To focus the application process, applicants should prepare their amendment applications with the following in mind:

1. The Council's existing program addresses a great variety of fish and wildlife concerns. Applicants should carefully review the program and determine if existing measures address the applicant's concerns. If so, applicants must explain how their proposal would be more effective than existing measures, or why their proposal would not duplicate existing measures.

2. In the past, several applicants have failed to demonstrate that their proposals addressed the effects of hydroelectric development or operations. This requirement is imposed by statute, and applicants must take care to address it expressly, and in detail.

3. Past applications have been rejected because they were not shown to be supported by the best available scientific knowledge. Applicants must take particular care to address this statutory requirement. In doing so, applicants need not submit copies of scientific studies or reports, but should summarize such studies and explain specifically how they support the applicant's proposal. Applicants also should provide appropriate bibliographical references and indicate where copies of such references can be obtained if needed.

4. Applications will be evaluated in part on their potential to complement the Council's ongoing planning and implementation activities. The enclosed form lists materials relating to those activities. Applicants who wish to receive copies of relevant materials should complete and return the enclosed form.

5. Applicants will be considered through a series of consultations, public hearings throughout the region, public comment at Council meetings, written comment, and analysis by the Council and its staff. Applicants should be aware that they will need to invest substantial time and energy to justify applications throughout this process.

Additional instructions are contained in the amendment application form. Amendment application forms and materials described on the enclosed list may be requested by writing to Janie Pearcy at the Council's address provided above or by calling her at 503–222–5161 (toll-free 1–800–222–3355 from Idaho, Montana and Washington; toll-free 1–800–452–2324 from Oregon). Prospective applicants should consult with members of the Council's fish and wildlife staff prior to submitting an application.

3. Amendment Processes

Once amendment applications are received, copies of the completed applications will be distributed and public comment will be taken. The Council staff will prepare papers analyzing significant issues raised in the applications, and those "issue papers" will be distributed. The Council will conduct consultations with fish and wildlife agencies, Indian tribes, federal agencies responsible for managing, operating or regulating Columbia River Basin hydroelectric facilities, and customers or other electric utilities that own or operate such facilities. Public hearings will also be conducted. Following these consultations and hearing, the Council will develop and circulate a draft amendment document. Further consultations, public hearings and written comments will occur regarding the draft document. After the close of the comment period, the Council will deliberate in public meetings and make its decisions.

Any comments and suggestions on amendment processes must be submitted to Janis Chrisman, the Council's Fish and Wildlife Director, at the address given above, by no later than 5 p.m. Tuesday, September 3, 1985.

Edward Sheets,

Executive Director.

Order Form for Materials Related to Amendment Process

General

——— Columbia River Fish and Wildlife Program (1984).

——— Appendices to Columbia River Basin Fish and Wildlife Program (1984) (contains explanation of rejections of prior amendment applications and responses to comments on prior draft amendments.)

——— Amendment application form (1985).

Salmon and Steelhead

——— Program Section 201 and Action Item 36, as amended on February 21, 1985.

——— Work Plan for Development of a Program Framework (Losses, Goals, Production Objectives and Measuring Techniques) (April 1985).

——— System Planning Issue Paper. (What kind of goals and production objectives will best ensure a systemwide program? What passage mortality and harvest considerations should be taken into account?)

——— Accounting/Modeling Issue Paper. (Accounting: How should the Council account for the successes and failures in achieving goals and objectives? What accounting principles and techniques should be adopted to help promote fiscal responsibility, locate sources of successes and failures, address biological uncertainty and statistical fluctuations which affect predictive capability and help identify needs for adjustments? Modeling: To what extent could a computer simulation model assist in development, evaluation and refinement of the Council's program? Could such a model also be used to assess losses attributable to hydroelectric development and operations? For what other program purposes might a computer simulation model be useful? What models are being used already to evaluate fishery managaement strategies in the Columbia River Basin? How could a Council modeling effort be integrated with existing planning, harvest and project operation models?)

——— Production Potential Issue Paper. (Which method should be used for estimating production potential for the purpose of ranking sites, designating protected areas, and setting production objectives for the Council's program? What methods are being used by the fishery managers in other settings?) Available in late July 1985.

——— Stock Selection Policy Issue Paper. (What is the status of existing wild, natural and hatchery stocks within the Columbia River Basin? What guidelines should be used for deciding the extent and nature of any hatchery supplementation of wild and natural stocks under the Council's program? How should harvest considerations be taken into account in developing such guidelines? Is it possible for natural and wild production to be a primary goal given the demands of harvest? What gene conservation policies are needed?) Available in August 1985.

——— Resident Fish Substitutions Policy Issue Paper. (To what extent should resident fish production be used to mitigate losses of salmon and steelhead production in the Basin? Where are appropriate "substitution areas" for resident fish production?) Available in August 1985

——— Contributions Issue Paper. (What are the relative contributions of hydropower and nonhydropower factors to salmon and steelhead losses in the Columbia River Basin?) Available in late October 1985.

——— Basis Issue Paper. (What method should be used to set goals? Should hydropower-related losses, current production potential, harvest agreements, a combination of all three, or some other factors form the basis for goals?) Available in November 1985.

——— Terms and Responsibilities Issue Paper. (In what terms should goals be set? For example, how specific should goals be? Should goals be set in terms of species, stocks, or some other measure? In terms of smolts produced, fish harvested, escapement, spawning adults, all of these, or some other? What period of time should be covered? What are the general responsibilities of the hydropower project operators and regulators in relation to those of the resource managers (Indian tribes, fishery agencies, land and water managers) in achieving goals and objectives?) Available in November 1985.

——— Production Objectives Issue Paper. (What process should be used for setting production objectives? How should production objectives set in the Council's program complement production objectives set by the fishery managers in other settings? What production area divisions should be used? What are appropriate components of production objectives?) Available in November 1985.

——— Systemwide Passage and Flows Issue Paper. (What are appropriate systemwide program objectives with respect to mainstem passage and flows?) Available in January 1986.

——— Goals Package Issue Paper. (Given the conclusions reached on the issue papers on system planning, basis, terms and responsibilities, stock selections, and resident fish substitutions, what is an appropriate statement of program goals?) Available in February 1986.

——— Notice of Losses and Goals Advisory Committee meetings.

——— Minutes of Losses and Goals Advisory Committee meetings.

——— Notices of Production Planning Advisory Committee meetings.

——— Minutes of Production Planning Advisory Committee meetings.

——— Notices of Resident Fish Substitutions Advisory Committee meetings.

——— Minutes of Resident Fish Substitution Advisory Committee meeting.

——— Notices of Mainstem Passage Advisory Committee meetings (to be formed in summer 1985).

——— Minutes of Mainstem Passage Advisory Committee meetings (to begin in summer 1985).

Also see Research, below.

Resident Fish

See "Resident Fish Substitutions" Issue Paper and Advisory Committee Notices and Minutes, listed under SALMON AND STEELHEAD, above. Also see Program sections 800–804 and 1503.

Research

——— Issue Paper on Salmon and Steelhead Research Objectives. Available in late 1985 or early 1986.

Wildlife

See Program Sections 1000–1004, 1503, 1504 and (Action Items 40–40.8, explaining mitigation planning processes in existing wildlife program).

New Hydroelectric Development

——— Pacific Northwest Hydro Assessment Study Work Plan. (August 1984.)

——— Issue Paper on Protected Areas. Available in January 1986.

——— Issue Paper on Site Ranking. Available spring 1986.

——— Notices of Hydro Assessment Steering Committee meetings.

——— Minutes of Hydro Assessment Steering Committee meetings.

Hydroelectric Project Operations

See Issue Paper on Systemwide Passage and Flows and Notices and Minutes for Mainstem Passage Advisory Committee, listed under SALMON AND STEELHEAD, above.

Name _____
Organization _____
Address _____

Please mail this order form to Janice Pearcy, Northwest Power Planning Council, Suite 1100, 850 S. W. Broadway, Portland, Oregon 97205.

[FR Doc. 85–16206 Filed 7–8–85; 8:45 am]

BILLING CODE 0000–00–M

SMALL BUSINESS ADMINISTRATION

Action Subject to Intergovernmental Review

AGENCY: Small Business Administration.

ACTION: Notice of Action Subject to Intergovernmental Review Under Executive Order 12373.

SUMMARY: This notice provides for public awareness of SBA's intention to fund for the first time an additional Small Business Development Center (SBDC) in North Dakota during fiscal year 1985. Currently, there are 40 SBDC's in existence. This notice also provides a description of the SBDC program by setting forth a condensed version of the program announcement which has been furnished to the proposal developer for the SBDC to be funded. This publication is being made to provide the State single point of contact, designated pursuant to Executive Order 12372, and other interested State and local entities, the opportunity to comment on the proposed funding in accord with the Executive Order and SBA's regulations found at 13 CFR Part 135.

DATE: Comments will be accepted through September 9, 1985.

ADDRESS: Comments should be addressed to Mrs. Johnnie L. Albertson, Deputy Associate Administrator for SBDC Programs, U.S. Small Business Administration, 1441 L Street, NW., Washington, D.C. 20416.

FOR FURTHER INFORMATION CONTACT: Same as above.

Action Subject to Intergovernmental Review

SBA is bound by the provisions of Executive Order 12372, "Intergovernmental Review of Federal Programs." SBA has promulgated regulations spelling out its obligations under that Executive Order. See 13 CFR Part 135, effective September 30, 1983.

In accord with these regulations, specifically § 135.4, SBA is publishing this notice to provide public awareness of the pending application for funding of the proposed Small Business Development Center (SBDC). Also, published herewith is an annotated program announcement describing the SBDC program in detail.

The proposed SBDC will be funded at the earliest practicable date following the 60-day comment period. However, no funding will occur unless all comments have been considered. Relevant information identifying this SBDC and providing the mailing address of the proposal developer is provided below. In addition to this publication, a copy of this notice is being simultaneously furnished to the affected State single point of contact which has been established under the Executive Order.

The State single point of contact and other interested State and local entities are expected to advise the relevant proposal developer of their comments regarding the proposed funding in writing as soon as possible. Copies of such written comments must also be furnished to Mrs. Johnnie L. Albertson, Deputy Associate Administrator for SBDC Programs, U.S. Small Business Administration, 1441 L Street NW., Washington, D.C. 20416. Comments will be accepted by the relevant proposal developer and SBA for a period of two months (60 days) from the date of publication of this notice. The proposal developer will make every effort to accommodate these comments during the 60-day period. If the comments cannot be accommodated by the proposal developer, SBA will, prior to funding the proposed SBDC, either attain accommodation of any comments or furnish an explanation to the commenter of why accommodation cannot be attained prior to funding the SBDC.

Description of the SBDC Program

The Small Business Development Center Program is a major management assistance delivery program of the U.S. Small Business Administration. SBDC's are authorized under section 21 of the Small Business Act (15 U.S.C. 648). SBDC's operate pursuant to the provisions of section 21, a Notice of Award (Cooperative Agreement) issued by SBA, and a Program Announcement. The Program represents a partnership between SBA and the State-endorsed organization receiving Federal assistance for its operation. SBDC's operate on the basis of a State plan which provides small business assistance throughout the State. As a condition to any financial award made to an applicant, an additional amount equal to the amount of assistance provided by SBA must be provided to the SBDC from sources other than the Federal Government.

Purpose of Scope

The SBDC Program has been designed to meet the specialized and complex management and technical assistance needs of the small business community. SBDC's focus on providing indepth quality assistance to small businesses in all areas which promote growth, expansion, innovation, increased productivity and management

improvement. SBDC's act in an advocacy role to promote local small business interests. SBDC's concentrate on developing the unique resources of the university system, the private sector, and State and local governments to provide services to the small business community which are not available elsewhere. SBDC's coordinate with other SBA programs of management assistance and utilize the expertise of these affiliated resources to expand services and avoid duplication of effort.

Program Objectives

The overall objective of the SBDC Program is to leverage Federal dollars and resources with those of the State academic community and private sector to:

(a) Strengthen the small business community;

(b) Contribute to the economic growth of the communities served;

(c) Make assistance available to more small businesses than is now possible with present Fedeal resources; and

(d) Create a broader based delivery system to the small business community.

SBDC Program Organization

SBDC's are organized to provide maximum services to the local small business community. The lead SBDC receives financial assistance from the SBA to operate a statewide SBDC Program. In states where more than one organization receives SBA financial assistance to operate an SBDC, each lead SBDC is responsible for Program operations throughout a specific regional area to be served by the SBDC. The lead SBDC is responsible for establishing a network of SBDC subcenters to offer service coverage to the small business community. The SBDC network is managed and directed by a single full-time Director. SBDC's must ensure that at least 80 percent of Federal funds provided are used to provide services to small businesses. To the extent possible, SBDC's provide services by enlisting volunteer and other low cost resources on a statewide basis.

SBDC Services

The specific types of services to be offered are developed in coordination with the SBA district office which has jurisdiction over a given SBDC. SBDC's emphasize the provision of indepth, high-quality assistance to small business owners or prospective small business owners in complex areas that require specialized expertise. These areas may include, but are not limited to: management, marketing, financing, accounting, strategic planning, regulation and taxation, capital formation, procurement assistance, human resource management, production, operations, economic and business data analysis, engineering, technology transfer, innovation and research, new product development, product analysis, plant layout and design, agribusiness, computer application, business law information, and referral (any legal services beyond basis legal information and referral require the endorsement of the State Bar Association,) exporting, office automation, site selection, or any other areas of assistance required to promote small business growth, expansion, and productivity within the State.

The degree to which SBDC resources are directed towards specific areas of assistance is determined by local community needs, SBA priorities and SBDC Program objectives and agreed upon by the SBA district office and the SBDC.

The SBDC must offer quality training to improve the skills and knowledge of existing and prospective small business owners. As a general guideline, SBDC's should emphasize the provision of training in specialized areas other than basic small business management subjects. SBDC's should also emphasize training designed to reach particular audiences such as members of SBA priority and special emphasis groups.

SBDC Program Requirements

The SBDC is responsible to the SBA for ensuring that all programmatic and financial requirements imposed upon them by statute or agreement are met. The SBDC must assure that quality assistance and training in management and technical areas is provided to the State small business community through the State SBDC network. As a condition of this agreement, the SBDC must perform but not be limited to the following activities.

(a) The SBDC ensures that services are provided as close as possible to small business population centers. This is accomplished through the establishment of SBDC subcenters.

(b) The SBDC ensures that lists of local and regional private consultants are maintained at the lead SBDC and each SBDC subcenter. The SBDC utilizes and provides compensation to qualified small business vendors such as private management consultants, private consulting engineers, and private testing laboratories.

(c) The SBDC is responsible for the development and expansion of resources within the State, particularly the development of new resources to assist small business that are not presently associated with the SBA district office.

(d) The SBDC ensures that working relationships and open communications exist within the financial and investment communities, and with legal associations, private consultants, as well as small business groups and associations, to help address the needs of the small business community.

(e) The SBDC ensures that assistance is provided to SBA special emphasis groups throughout the SBDC network. This assistance shall be provided to veteran, women, exporters, the handicapped, and minorities as well as any other groups designated a priority by SBA. Services provided to special emphasis groups shall be performed as part of the Cooperative Agreement.

Advance Understandings

(a) Lead SBDC's shall operate on a 40-hour week basis, or during normal State business hours, with National holidays or State holidays as applicable excluded.

(b) SBDC subcenters shall be operated on a full-time basis. The lead SBDC shall ensure that staffing is adequate to meet the needs of the small business community.

(c) All counseling assistance offered through the Small Business Development Center network shall be provided at no cost to the client.

Address of Proposed SBDC and Proposal Developer: Dr. Clair Rowe, University of North Dakota, Grand Forks, N.D. 58202.

Dated: July 1, 1985.

James C. Sanders,

Administrator.

[FR Doc. 85-16308 Filed 7-8-85; 8:45 am]

BILLING CODE 8025-01-M

Computer Security and Education Advisory Council; Public Meeting

The U.S. Small Business Administration's Computer Security and Education Advisory Council will hold a public meeting at 9:00 a.m. on Thursday, July 18, in the Treasury Room, at the J.W. Marriott Hotel, 1331 Pennsylvania Avenue, NW., Washington, D.C. 20004, to discuss such matters as may be presented by Members, and to allow three computer research experts in the field of computer security to share their experience and knowledge with the Council, and offer perceptions and recommendations on the extent of these problems in the small business community.

For further information, write or call John J. Sweeney, Deputy Associate Administrator, U.S. Small Business Administration, 1441 L Street, NW., Room 317, Washington, D.C. 20406: (202) 653–6330.

Jean M. Nowak,

Director, Office of Advisory Councils.

July 3, 1985.

[FR Doc. 85–16261 Filed 7–8–85; 8:45 am]

BILLING CODE 8025–01–M

California; Region IX Advisory Council Meeting

The U.S. Small Business Administration, Region IX Advisory Council, located in the geographical area of Los Angeles, will hold a public meeting at 9:00 a.m. on Thursday, August 8, 1985, at the Bank of America Executive Board Room, 555 South Street, Los Angeles, California 90071, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call M. Hawley Smith, District Director, U.S. Small Business Administration, 350 South Figueroa Street, Suite #600, Los Angeles, California 90071, Telephone No. (213) 894–2977.

Jean M. Nowak,

Director, Office of Advisory Councils.

July 3, 1985.

[FR Doc. 85–16260 Filed 7–8–85; 8:45 am]

BILLING CODE 8025–01–M

[License No. 04/04–0225]

Blackburn-Sanford Venture Capital Corp.; License Surrender

Notice is hereby given that Blackburn-Sanford Venture Capital Corp. (BSVCC), Louisville, Kentucky, has surrendered its license and no longer operates as a small business investment company under the Small Business Investment Act of 1958, as amended (the Act). BSVCC was licensed by the Small Business Administration on November 30, 1983.

Under the authority vested by the Act and pursuant to the regulations promulgated thereunder, the surrender was effective April 22, 1985, and accordingly, all rights, privileges and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: June 28, 1985.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 85–16318 Filed 7–8–85; 8:45 am]

BILLING CODE 8025–01–M

[License No. 10/10–0176]

Clifton Capital Corp.; Surrender of License

Notice is hereby given that Clifton Capital Corporation, 1408 Washington Building, Tacoma, Washington 98402 has surrendered its License to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (the Act). Clifton Capital Corporation was licensed by the Small Business Administration on April 14, 1982.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender was accepted on May 23, 1985, and accordingly, all rights, priveleges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.001, Small Business Investment Companies)

Dated: June 28, 1985.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 85–16320 Filed 7–8–85; 8:45 am]

BILLING CODE 8025–01–M

Region IX Advisory Council Meeting; Public Meeting

The U.S. Small Business Administration Region IX Advisory Council, located in the geographical area of San Francisco, California, has changed its public meeting date from Tuesday, July 9, 1985, to Tuesday, July 16, 1985, at 211 Main Street, 5th Floor, Conference Room 543 at 10:00 a.m., to discuss such matters as may be presented by members, staff of the Small Business Administration, or others present.

For further information, write or call Lawrence J. Wodarski, District Director, U.S. Small Business Administration, 211 Main Street—4th Floor, San Francisco, California 94105, (415) 974–0642.

June 28, 1985.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 85–16319 Filed 7–8–85; 8:45 am]

BILLING CODE 8025–01–M

Reporting and Recordkeeping Requirement Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of Reporting and Recordkeeping Requirement Submitted for OMB Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirement to OMB for review and approval, and to publish notice in the Federal Register that the agency has made such a submission.

DATE: Comments must be received on or before July 31, 1985. If you anticipate commenting on a submission but find that time to prepare will prevent you from submitting comments promptly, advise the OMB reviewer and the Agency Clearance Officer of your intent as early as possible before the comment deadline.

Copies: Copies of the form, request for clearance (S.F. 83), supporting statement, instruction, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: Richard Vizachero, Small Business Administration, 1441 L Street, NW., Room 200 Washington, D.C. 20416, Telephone: (202) 653–8538.

OMB Reviewer: David Reed, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3225, New Executive Office Building, Washington, D.C. 20503, Telephone: (202) 395–7231.

Information Collection Submitted for Review

Title: Measuring the Costs of Producing Bank Services in a Deregulated Environment Questionnaire

Frequency: One time, non-recurring

Description of Respondents: The data is collected from banks in the U.S. to gather cost information on the production of key bank services, including demand deposits, time deposits, and various basic loan categories. This information will be used to test various research hypotheses concerning economies of scale and scope.

Annual Responses: 250

Annual Burden Hours: 250

Type of Request: New

Dated: July 2, 1985.

Elizabeth M. Zaic,

Deputy Director, Office of Administration Services.

[FR Doc. 85-16307 Filed 7-8-85; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[CM-8/865]

National Committee of the U.S. Organization for the International Radio Consultative Committee; Meeting

The Department of State announces that the National Committee of the U.S. Organization for the International Radio Consultative Committee (CCIR) will meet on July 30, 1985, at 1:30 p.m. in Room 1912, Department of State, 2201 C Street, NW., Washington, D.C.

The National Committee assists in the resolution of administrative/procedural problems pertaining to U.S. CCIR activities; provides advice on matters of policy and positions in preparation for CCIR Plenary Assemblies and meetings of the international Study Groups; and recommends the disposition of proposed U.S. contributions to the international CCIR which are submitted to the Committee for consideration.

The main purposes of the meeting will be:

1. Review of preparations for final international Study Group meetings;

2. Report of the Interdepartment Radio Advisory Committee (IRAC) Ad Hoc Group on CCIR Matters;

3. Revisions to CCIR National Organization charter;

4. Other business.

Members of the general public may attend the meeting and join in the discussions subject to instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled. All persons wishing to attend the meeting should contact the office of Richard Shrum, Department of State, Washington, D.C.; telephone (202) 632-2592. All attendees must use the C Street entrance to the building.

Dated: June 28, 1985.

Richard E. Shrum,

Chairman, U.S. CCIR National Committee.

[FR Doc. 85-16282 Filed 7-8-85; 8:45 am]

BILLING CODE 4710-07-M

[CM-8/866]

Reform Observation Panel for UNESCO; Closed Meeting

The Reform Observation Panel for UNESCO will meet on July 23, 1985 in the Buchanan room of the Department of State, 21st and C Streets, NW., Washington, D.C. The meeting will begin at 12:30 p.m.

The principal agenda item will be:

—Reports from Panel members who have attended UNESCO's 121st Executive Board Session (May 6–June 21)

—Future work program of the Panel

The purpose of the meeting will be to discuss UNESCO reform progress at the 121st Executive Board session, possibilities of continued reform of the Organization, means to encourage reform in UNESCO, and U.S. policy towards UNESCO. At this meeting, there will be a classified briefing by Department of State officials and discussion of documents classified pursuant to Executive Order 12356. Accordingly, a determination has been made that the meeting should be closed to the public pursuant to section 10(d) of the Federal Advisory Committee Act and 5 U.S.C. 552b (c)(1) and (c)(9)(B).

Requests for further information on the meeting should be directed to the Panel's Assistant Executive Secretary: Mr. Charles H. Kuck, Room 4334A, Department of State, 21st and C Streets, NW., Washington, D.C. 20520 (202 632-1534.

Dated: June 27, 1985.

Jean C. Berguast,

Executive Secretary, Reform Observation Panel.

[FR Doc. 85-16265 Filed 7-8-85; 8:45 am]

BILLING CODE 4710-19-M

[CM08/863]

Shipping Coordinating Committee, Subcommittee on Safety of Life at Sea, Working Group on Radiocommunications; Meetings

The Working Group on Radiocommunications of the Subcommittee on Safety of Life at Sea will conduct four open meetings at 0930 a.m., in room 8336 of the Department of Transportation, 400 Seventh Street, SW., Washington, D.C. on July 22, July 31, August 28, and October 2, 1985.

The purpose of these meetings is to prepare position documents for the Thirtieth Session of the Subcommittee on Radiocommunications of the International Maritime Organization to be held 14–18 October 1985. In particular, the working group will discuss the following topics:

—Maritime Distress System

—Digital Selective Calling

—Satellite Emergency Position Indicating Radio Beacons (EPIRBs)

—Preparations for the International Telecommunication Union (ITU) World Administrative Radio Conference (WARC) for Mobil Telecommunications

—Preparations for International Radio Consultative Committee (CCIR) Study Group 8

—Promulgation of Navigational and Meteorological Warnings

Members of the public may attend up to the seating capacity of the room.

For further information contact Mr. Richard Swanson, U.S. Coast Guard Headquarters (G-TPP-3/63), 2100 2nd Street, SW., Washington, D.C. 20593. Telephone: (202) 426-1231.

Dated: June 19, 1985.

Samuel V. Smith,

Executive Secretary, Shipping Coordinating Committee.

[FR Doc. 85-16284 Filed 7-8-85; 8:45 am]

BILLING CODE 4710-07-M

[CM-8/864]

Study Groups A and B of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT); Meeting

The Department of State announces that Study Groups A and B of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on July 25, 1985 at 10:00 a.m. in Room 1406, Department of State, 2201 C Street, NW., Washington, D.C. If an additional meeting is necessary, it will be held on August 1, 1985 at 10:00 a.m. in Room 1207.

Study Group A deals with U.S. Government aspects of international telegram and telephone operations and tariffs; Study Group B deals with international telecommunications terminal equipment.

The Study Groups will discuss international telecommunications questions relating to telephone, telegraph, telex, new record services, data transmission and leased channel services in order to develop U.S. positions to be taken at the upcoming international meeting of CCITT Study Groups. The July 25 meeting will include a debriefing of the meeting of CCITT Study Group VIII held in June in Kyoto.

Members of the general public may attend the meeting and join in the

discussion subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled. All persons wishing to attend the meeting should contact the office of Earl Barbely, Department of State, Washington, D.C.; telephone (202) 632-5832. All attendees must use the C Street entrance to the building.

Earl S. Barbely,

Chairman, U.S. CCITT National Committee.

June 25, 1985.

[FR Doc. 85-16263 Filed 7-8-85; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

[Order 85-7-11; Docket 43109]

Application of Calypso Wings, Incorporated for Certificate Authority Under Subpart Q; Order To Show Cause

AGENCY: Department of Transportation.

ACTION: Notice of order to show cause, (Order 85-7-11) Docket 43109.

SUMMARY: The Department is directing all interested persons to show cause why it should not issue an order finding Calypso Wings fit, awarding it a certificate of public convenience and necessity to engage in interstate and overseas scheduled air transportation.

DATES: Persons wishing to file objections shall do so no later than July 24, 1985; answers to objections shall be filed no later than August 5, 1985.

ADDRESSES: Objections and answers to objections should be filed in Docket 43109 and addressed to the Documentary Services Division, U.S. Department of Transportation, 400 Seventh Street, S.W., Room 4107, Washington, D.C. 20590, and should be served upon the persons listed in Attachment B to the order.

FOR FURTHER INFORMATION CONTACT: Juliana M. Winters, Office of Aviation Enforcement and Proceedings, U.S. Department of Transportation, 400 Seventh Street, S.W., Room 4116, Washington, D.C. 20590, (202) 426-7631.

SUPPLEMENTARY INFORMATION: The complete text of Order 85-7-11 is available from our Documentary Services Division at the address above. Persons outside the metropolitan area may send a postcard request for Order 85-7-11 to that address.

Dated: July 2, 1985.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 85-16281 Filed 7-8-85; 8:45 am]

BILLING CODE 4910-62-M

Office of the Secretary

[Docket 43065]

Pacific Division Transfer Case; Hearing Postponement

Notice is hereby given that the hearing in the above-entitled proceeding, previously scheduled to commence on July 29, 1985, has been postponed. That hearing is hereby scheduled to be held commencing on August 5, 1985, at 9:30 a.m. (local time) in Room 2230, Nassif Bldg., 400 7th Street SW., Washington, D.C., before the undersigned.

Dated at Washington, D.C., July 3, 1985.

Elias C. Rodriguez,

Chief Administrative Law Judge.

[FR Doc. 85-16282 Filed 7-8-85; 8:45 am]

BILLING CODE 4910-62-M

[Docket 43224; Order 85-7-17]

Texas Air Corporation, and Trans World Airlines, Inc.; Joint Application for Approval of Acquisition of Control

Issued by the Department of Transportation on the 3rd day of July 1985.

Order

On June 28, 1985, Texas Air Corporation and Trans World Airlines, Inc., filed an application for prior approval under section 408 of the Federal Aviation Act, 49 U.S.C. 1378, of Texas Air Corporation's acquisition of control of Trans World Airlines. We have made a preliminary review of the application and its supporting material, and it appears that the applicants have submitted information under each section of the Department's rules governing supporting information for section 408 applications. Sections 30 through 38 of Part 303 of the Department's Procedural Regulations, 50 FR 2373, 2420-21, January 16, 1985.

Since our preliminary review suggests that sufficient information has been submitted to allow the Department to begin processing the application, we have determined that we should not reject the application as incomplete at this time, and that we should set a timetable for public comment on the application.

We have decided to give interested persons fourteen days from the date of issuance of this order to comment on the application. Comments may address the merits of the application, whether additional information should be demanded from the applicants, what procedures should be followed in considering the application, and other matters interested persons wish to raise at this time. Replies to any answers or comments should be submitted seven calendar days after the date for submission of comments. If any person wishes the Department to hold a formal hearing on the application, that person must specify which factual issues should be examined in an oral evidentiary hearing and why those issues cannot be resolved without resort to oral evidentiary procedures.[1]

Part of the supporting information submitted with the application was filed under the cover of a Rule 39 motion requesting that it be treated confidentially. We will grant the motion, subject to reconsideration at any time for good cause shown. In addition, we will allow counsel and experts for other parties to inspect immediately *in camera* the documents for which the applicants request confidential treatment. Counsel and experts for interested parties may inspect the documents at the offices of the Department of Transportation, Room 4107, 400 Seventh Street, SW., Washington, D.C., upon the submission of an affidavit indicating that he or she will preserve the confidentiality of the information contained therein. Any answer or other filing raising matters contained in the confidential documents must be accompanied by a Rule 39 motion requesting confidential treatment.

Finally, we wish to make it clear that we have not ruled here on the adequacy of the information for decisional purposes, nor on any substantive or procedural issues. Rather, we have merely decided not to reject the application at this time and to provide an opportunity for the early submission of comments and replies. As a result, parties should consider the adequacy of the record and point out areas where additional information may be required. We, of course, also retain the discretion to require that additional information be filed.

Accordingly,

1. Answers, comments and other filings relating to this application are due July 17, 1985;

[1] The applicants have proposed an expedited procedural schedule under which the Department would issue its final decision by September 16, 1985. We are not prepared to adopt such an expedited schedule now, particularly since other persons have had no opportunity to comment on the application.

2. Replies are due seven calendar days thereafter;

3. We grant, subject to reconsideration at any time, the Applicants' Motion for Confidential Treatment; and

4. This order will be published in the Federal Register.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 85-16280 Filed 7-8-85; 8:45 am]

BILLING CODE 4910-62M-M

Federal Aviation Administration

[Summary Notice No. PE-85-16]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before: July 29, 1985.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Petition Docket No. ———, 800 Independence Avenue, SW., Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-204), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 426-3644.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on July 1, 1985.

Richard C. Beitel,

Acting Assistant Chief Counsel, Regulations and Enforcement Division.

Petitions for Exemption

Docket No.	Petitioner	Regulations affected	Description of relief sought
24659	Reynolds Aluminum	14 CFR 21.181	To allow petitioner to operate certain aircraft utilizing the provisions of a minimum equipment list.
24660	Oscar Mayer Foods Corp	14 CFR 21.181	To allow petitioner to operate certain aircraft utilizing the provisions of a minimum equipment list.
24657	Metromedia Flight Dept	14 CFR 21.181	To allow petitioner to operate certain aircraft utilizing the provisions of a minimum equipment list.
24663	James River Corp. of Virginia	14 CFR 21.181	To allow petitioner to operate certain aircraft utilizing the provisions of a minimum equipment list.
24422	Emerson Electric Co	14 CFR 21.181	To allow petitioner to operate certain aircraft utilizing the provisions of a minimum equipment list.
23530	Minuteman Aviation, Inc	14 CFR 135.261(b)	To extend exemption 3774; to allow petitioner to continue to operate its helicopter hospital emergency medical evacuation service without complying with the duty time limitations.
24645	Bar Flying Service Inc	14 CFR 141.35(b)(3)	To allow Sam Puma to serve as chief instructor for the Seven Bar Part 141 private course without meeting the regulation's full 500 hour, two-year certification requirements.
15590	Embry-Riddle Aeronautical University	14 CFR Portions of Part 141, Appendices A, C, D, F, and H.	To continue to exempt certain students from the minimum flight time requirements.
24617	Petro Jet Aviation, Inc	14 CFR 43.3(g)	To allow petitioner's pilots to remove and replace the passenger seats and the AVCON Industries ambulatory stretcher and base assembly in Lear 20 series aircraft.
24623	Pacific Coast Airlines	14 CFR 135.89 & 135.157	To allow petitioner to remove the oxygen system in petitioner's Handley Page HP-137 Jetstream Mk. 1 Aircraft and configure the aircraft to comply with 14 CFR Part 121, for turbine aircraft certified up to 25,000 feet.
24605	World Jet Corp	14 CFR 91.191(a)(4) & 135.165(b)	To allow petitioner to operate certain aircraft in extended overwater operations using one Omega long-range navigation system and one high-frequency communication system.
22216	McMahan Aviation, Inc	14 CFR 93.113	To permit petitioner's pipeline patrol aircraft transit through certain high density control zones under special VFR.
24673	Rynes Aviation, Inc	14 CFR Portions of	To exempt petitioner from airport reservation requirements of FAR Part 93, Subpart K in order to operate its home-based on-demand charter flights into/out of Chicago O'Hare Airport.

Dispositions of Petitions for Exemption

Docket No.	Petitioner	Regulations affected	Description of relief sought/disposition
24146-1	South Pacific Island Airways, Inc	14 CFR 91.303	To exempt petitioner from the January 1, 1985, noise level compliance date. *Denied 5/29/85.*
24384-1	Pan Aviation, Inc	14 CFR 91.303	To exempt petitioner from the January 1, 1985, noise level compliance date. *Denied 5/24/85.*
23072	simulator Flight Time, Inc	14 CFR 61.65(c)(4)	To permit petitioner to substitute simulator training for the 250-nautical mile cross country trip. *Denied 5/17/85.*
24221-1	Japan Air Lines	14 CFR 91.303	To exempt petitioner from the January 1, 1985, noise level compliance date. *Denied 6/5/85.*
24239	Skydive, Inc	14 CFR 105.43(a)	To allow petitioner's employees, representatives and customers under its direction and control to make parachute jumps and for pilots in command of aircraft to allow these persons to make parachute jumps from aircraft while wearing a dual harness, dual parachute pack having at least one main parachute and one appropriately approved auxiliary parachute packed in accordance with § 105.43(a). *Granted 5/30/85.*
24413	Flight Training Int'l	14 CFR 61.63(d) & 61.157(d)	To allow petitioner's trainees to complete the practical test for issuance of a type rating to be added to a pilot certificate, regardless of its grade, in an airplane simulator as set forth in Part 61, Appendix A. *Granted 5/17/85.*

DISPOSITIONS OF PETITIONS FOR EXEMPTION—Continued

Docket No.	Petitioner	Regulations affected	Description of relief sought disposition
23468	American Arabian Oil Company (Aramco)	14 CFR Portions of Part 21	To allow petitioner to operate 21 corporate aircraft using a Federal Aviation Administration (FAA)-approved minimum equipment list (MEL). *Granted 5/29/85.*
24546	United States Parachute Association	14 CFR 91.47	To allow the petitioner to carry up to 40 passengers in its Douglas DC-3/C-47 aircraft during the 1985 United States National Skydiving Championships in Muskogee, Oklahoma during the period of June 20 through July 17, 1985. *Granted 5/24/85.*
24637	Union de Transports Aeriens	14 CFR 145.73(a)	To permit petitioner to perform modifications to a U.S.-registered McDonnell Douglas DC-8-60 aircraft, N2919N, Serial No. 46052, without complying with the requirements for a foreign repair station to work only on U.S.-registered aircraft used in operations conducted wholly or partly outside of the United States. *Granted 5/17/85.*
23978-1	Airmark Corp	14 CFR 91.303	To allow petitioner to operate one Stage 1 Boeing 707-138 until hush kits are installed. *Amended grant 6/20/85.*
24345	Varig, S.A	14 CFR 91.303	To exempt petitioner from the January 1, 1985, noise level compliance date. *Amended partial grant 6/20/85.*
24351	Surinam Airways Limited	14 CFR 91.303	To exempt petitioner from the January 1, 1985, noise level compliance date. *Amended grant 6/20/85.*
24660	Lineas Aereas Del Caribe	14 CFR 91.307	To allow operation in the United States, under a service to small communities exemption, of specified two-engine airplanes identified by registration and serial number, that have not been shown to comply with the applicable operating noise limits as follows: Until not later than January 1, 1988: Caravelle 11R: HK 2850. *Granted 5/12/85.*
24289-1	Buffalo Airways	14 CFR 91.303	To exempt petitioner from the January 1, 1985, noise level compliance date. *Granted 6/11/85.*
24370-1	Hawaiian Airlines, Inc	14 CFR 91.303	To exempt petitioner from the January 1, 1985, noise level compliance date. *Denied 6/20/85.*
24277-1	ABCO Leasing	14 CFR 91.303	To allow petitioner to operate one Stage 1 Boeing 707 aircraft beyond the January 1, 1985, noise level compliance date. *Denied 6/20/85.*
24186-1	Arrow Air, Inc	14 CFR 91.303	To exempt petitioner from the January 1, 1985, noise level compliance date. *Granted 6/20/85.*
24259	Schlumberger Limited	14 CFR 21.181	To permit petitioner to operate its aircraft using a Federal Aviation Administration (FAA)-approved minimum equipment list (MEL). *Granted 6/4/85.*
24388	TransBrasil S.A., Linhas Aereas	14 CFR 21.181	To allow petitioner to operate a B-707 airplane utilizing the provisions of minimum equipment list. *Granted 6/4/85.*
24409	Pellerin Milnor Corp	14 CFR 21.181	To allow petitioner and Pellerin Laundry Machinery Sales Company to operate a Beech Model 200 aircraft utilizing the provisions of a minimum equipment list. *Granted 6/4/85.*
24535	Lowell D. Wierks	14 CFR 121.383(c)	To allow petitioner to serve as a pilot in Part 121 operations after reaching his 60th birthday. *Denied 6/7/85.*

[FR Doc. 85-16331 Filed 7-8-85; 8:45 am]

BILLING CODE 4910-13-M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459) to assist and encourage cultural interchange, and Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), I hereby determine that the objects in the exhibit "Treasures of the Holy Land: Ancient Art from the Israel Museum" (included in the list[1] filed as part of this determination) imported from abroad for temporary exhibition without profit within the United States are of cultural significance. These objects are to be imported pursuant to a loan agreement between the Israel Museum and the Metropolitan Museum of Art. I also determine that the temporary exhibition or display of the listed cultural artifacts at several museums in the United States, beginning on or about September 1, 1986 to on or about September 1, 1987, is in the national interest. The grant of immunity pursuant to this action does not imply any view of the United States concerning the ownership of the exhibit objects. Further, it is not based upon and does not represent any change in the position of the United States regarding the status of Jerusalem or the territories occupied by Israel since 1967. *See* Letter of September 22, 1978, of President Jimmy Carter, attached to the Camp David Accords, *reprinted in* 78 *Dept. of State Bulletin* 11 (October 1978); Statement of September 1, 1982, of President Ronald Reagan, *reprinted in* 82 *Dept. of State Bulletin* 23 (September 1982).

Public notice of this determination is ordered to be published in the **Federal Register.**

Dated: July 2, 1985.

Charles Z. Wick,

Director.

[FR Doc. 85-16349 Filed 7-8-85; 8:45 am]

BILLING CODE 8230-01-M

[1] An itemized list of objects included in the exhibit is filed as part of the original document.

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and the Delegation of Authority from the Director, USIA (47 FR 57600, December 27, 1982), I hereby determine that selected objects in the exhibit "Diego Rivera: A Retrospective" (specified in the list[1] filed as part of this Determination), imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement between the Detroit Institute of Arts and a foreign lender. I also determine that the temporary exhibition or display of the listed exhibit objects at the Detroit Institute of Arts, Detroit, Michigan, beginning on or about February 10, 1986, to on or about April 27, 1986, and at the Philadelphia Museum of Art, Philadelphia, Pennsylvania, beginning on or about June 9, 1986, to on or about August 17, 1986, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register.**

Dated: July 8, 1985.

C. Normand Poirier,

Acting General Counsel and Congressional Liaison.

[FR Doc. 85-16440 Filed 7-8-85; 11:31 am]

BILLING CODE 8230-01-M

[1] An itemized list of imported objects among those included in the exhibit is filed as part of the original document.

Sunshine Act Meetings

Federal Register
Vol. 50, No. 131
Tuesday, July 9, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

1

COMMISSION ON CIVIL RIGHTS

PLACE: 1121 Vermont Avenue, NW., Room 512, Washington, D.C.

DATE AND TIME: Thursday, July 11, 1985, 9:00 a.m.–5:00 p.m.

STATUS OF MEETING: Open to the public.

MATTERS TO BE CONSIDERED:

I. Approval of Agenda
II. Approval of Minutes of Last Meeting
III. Staff Director's Report
  A. Status of Funds
  B. Personnel Report
  C. Office Directors' Reports
IV. F.Y. 1987 Program and Budget Package
V. Proposed Section V. (Voting Rights Act) Rules
VI. Civil Rights Developments in the New England Region

FOR FURTHER INFORMATION PLEASE CONTACT: Barbara Brooks, Press and Communications Division, (202) 376–8311.

Lawrence B. Glick,
Solicitor.
July 3, 1985.

[FR Doc. 85–16358 Filed 7–5–85; 9:32 am]
BILLING CODE 6335–01–M

2

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: Tuesday, July 16, 1985, 9:30 a.m. (eastern time).

PLACE: Clarence M. Mitchell, Jr., Conference Room No. 200–C on the 2nd Floor of the Columbia Plaza Office Building, 2401 "E" Street, NW., Washington, D.C. 20507.

STATUS: Part will be open to the public and part will be closed to the public.

MATTERS TO BE CONSIDERED:

1. Announcement of Notation Vote(s)
2. A Report on Commission Operations (Optional)
3. Compliance Manual Section 23, Volume I
4. Notice of Proposed Rulemaking: For an Exemption Allowing Waivers Under the ADEA
5. Processing Changes Raising the Issues of Jurisdiction over Licensing Agencies

Closed

1. Litigation Authorization; General Counsel Recommendations
2. Proposed Commission Decisions

Note.—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission Meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission sessions. Places telephone (202) 634–6748 at all times for information on these meetings).

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer, Executive Secretariat at (202) 634–6748.

Dated: July 5, 1985.
Cynthia C. Matthews,
Executive Officer.

This Notice Issued July 5, 1985.

[FR Doc. 85–16384 Filed 7–5–85; 12:28 pm]
BILLING CODE 6750–06–M

3

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

PREVIOUSLY ANNOUNCED TIME AND DATE: 2:00 p.m. (eastern time), Monday July 15, 1985.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT:

CHANGE IN THE MEETING: The following matter was added to the agenda for the closed portion of the meeting: "Proposed Commission Decisions".

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer, Executive Secretariat at (202) 634–6748.

Dated: July 5, 1985.
Cynthia C. Matthews,
Executive Officer, Executive Secretariat.

This Notice Issued July 5, 1985.

[FR Doc. 85–16835 Filed 7–5–85; 12:28 pm]
BILLING CODE 6750–06–M

4

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 4:23 p.m. on Tuesday, July 2, 1985, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to: (1) Receive bids for the purchase of certain assets of and assumption of the liability to pay deposits made in Madison Bank, Madison, Kansas, which was closed by the State Bank Commissioner for the State of Kansas on Tuesday, July 2, 1985; (2) accept the bid for the transaction submitted by The First National Bank of Madison, Madison, Kansas; and (3) provide such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction.

In calling the meeting, the Board determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Director H. Joe Selby (Acting Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(b)).

Dated: July 3, 1985.
Federal Deposit Insurance Corporation.
Hoyle L. Robinson,
Executive Secretary.

[FR Doc. 85–16375 Filed 7–5–85; 11:40 am]
BILLING CODE 6714–01–M

5

FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Friday, July 12, 1985.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, D.C. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Proposed Federal Reserve System guidelines regarding acquisitions from small and disadvantaged businesses.
2. Any items carried forward from a previously announced meeting.

Note.—This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: July 5, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85–16368 Filed 7–5–85; 11:05 am]

BILLING CODE 6210–01–M

6

FEDERAL RESERVE SYSTEM

TIME AND DATE: Approximately 11:30 a.m., Friday, July 12, 1985, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: July 5, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85–16369 Filed 7–5–85; 11:05 am]

BILLING CODE 6210–01–M

7

FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, July 15, 1985.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Street, NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: July 5, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85–16370 Filed 7–5–85; 11:05 am]

BILLING CODE 6210–01–M

8

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of July 8, 15, 22, and 29, 1985.

PLACE: Commissioners' Conference Room, 1717 H Street, NW., Washington, D.C.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of July 8

Tuesday, July 9

10:00 a.m.
Discussion of Pending Investigations (Closed—Ex. 5 & 7) (*postponed* from July 2)

Wednesday, July 10

2:30 p.m.
Discussion/Possible Vote on Full Power Operating License for Fermi-2 (Public Meeting)

Thursday, July 11

9:30 a.m.
Periodic Meeting with Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting)
11:30 a.m.
Affirmation Meeting (Public Meeting) (if needed)

Week of July 15—Tentative

Thursday, July 18

2:00 p.m.
Affirmation Meeting (Public Meeting) (if needed)

Week of July 22—Tentative

Tuesday, July 23

2:30 p.m.
Discussion on Threat Level and Physical Security (Closed—Ex. 1)

Wednesday, July 24

10:00 a.m.
Briefing on Accident Source Term Reassessment (Public Meeting)
1:30 p.m.
Briefing on Davis-Besse (Public Meeting)
3:30 p.m.
Affirmation Meeting (Public Meeting) (if needed)

Friday, July 26

10:00 a.m.
Briefing by Georgia Power (Vogtle) on Operational Readiness Review Pilot Program (Public Meeting)
2:00 p.m.
Discussion of Pending Investigations (Closed—Ex. 5 & 7)

Week of July 29—Tentative

Monday, July 29

2:00 p.m.
Discussion of DOE High Level Waste Management Program (Public Meeting)

Tuesday, July 30

10:00 a.m.
Continuation of 5/15 Briefing on Proposed Revision of Part 20 (Public Meeting)
2:00 p.m.
Dicussion/Possible Vote on Full Power Operating License for Diablo Canyon-2 (Public Meeting)

Wednesday, July 31

10:00 a.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6) (if needed)
2:00 p.m.
Discussion of Proposed Station Blackout Rule (Public Meeting)

Thursday, August 1

10:00 a.m.
Briefing on Safety Goal Evaluation Plan (Public Meeting)
2:00 p.m.
Affirmation Meeting (Public Meeting) (if needed)

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING): (202) 634–1498.

CONTACT PERSON FOR MORE INFORMATION: Julia Corrado, (202) 634–1410.

Andrew L. Bates,

Office of the Secretary.

July 3, 1985.

[FR Doc. 85–16405 Filed 7–5–85; 3:52 pm]

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federal register

Tuesday
July 9, 1985

Part II

Federal Trade Commission

16 CFR Part 453

Trade Regulation Rule; Funeral Industry Practices; Staff Compliance Guidelines

FEDERAL TRADE COMMISSION

16 CFR Part 453

Trade Regulation Rule; Funeral Industry Practices

AGENCY: Federal Trade Commission.

ACTION: Final Staff Compliance Guidelines.

SUMMARY: The staff of the Federal Trade Commission publishes its staff compliance guidelines for the Funeral Rule to provide assistance to industry members regarding areas in which the staff believes that guidance should prove most helpful. The views expressed in the guidelines are those of the staff only. They have not been approved or adopted by the Commission and are not binding on the Commission. However, the guidelines will serve as enforcement criteria for the staff in assessing compliance with the trade regulations rule.

EFFECTIVE DATE: July 9, 1985.

FOR FURTHER INFORMATION CONTRACT: Lewis Rose, 202–376–2863; Raouf M. Abdullah, 202–376–2891; or Lee J. Plave, 202–376–2805; Attorneys, Federal Trade Commission, Division of Enforcement, Washington, D.C. 20580.

SUPPLEMENTARY INFORMATION:

COMPLIANCE GUIDELINES

I. Introduction

These compliance guidelines describe certain provisions of the Federal Trade Commission's Trade Regulation Rule on Funeral Industry Practices (referred to hereafter as the "Funeral Rule" or "Rule")[1] which was promulgated on September 24, 1982.[2] The Funeral Rule has two different effective dates. Those portions of the Funeral Rule which prohibit certain oral or written misrepresentations became effective on January 1, 1984.[3] Those portions of the Funeral Rule which impose an affirmative obligation upon funeral providers (i.e., price lists, itemization, telephone disclosures, written disclosures) became effective on April 30, 1984.[4]

These compliance guidelines cover the entire Funeral Rule and incorporate the guidelines released on December 30, 1983 for those provisions of the Rule which became effective on January 1, 1984.[5] These guidelines neither amend nor modify the Funeral Rule. The staff is publishing these guidelines to provide assistance to industry members in understanding the Commission's Rule and complying with its obligations.

The views expressed in the guidelines are those of the staff only; they have not been approved or adopted by the Commission and they are not binding on the Commission. However, the guidelines will serve as enforcement criteria for staff in assessing compliance with the Commission's Funeral Rule.

The Funeral Rule requires that funeral providers disclose detailed information about prices and legal requirements to persons arranging funerals. The Rule requires disclosures of itemized price information both over the telephone and in writing. It also prohibits misrepresentations about legal, crematory, and cemetery requirements pertaining to the disposition of human remains. Certain unfair practices are also prohibited, such as embalming for a fee without prior permission; requiring consumers to purchase caskets for direct cremation; or conditioning the purchase of any funeral good or service on the purchase of any other funeral good or service.

These guidelines explain, section by section, the provisions of the Rule which became effective on April 30, 1984 and incorporate the guidelines issued earlier explaining the provisions which became effective on January 1, 1984. Included in the discussion of each Rule provision are illustrations of how the Rule will operate in specific fact situations which may arise in the ordinary course of business of many funeral providers. The guidelines cover those areas on which guidance should prove most helpful to industry members. If you have further questions regarding the Rule, they will be handled informally by the staff, or, if appropriate, by the Commission, as provided for in Sections 1.1 through 1.4 of the Commission's Rules of Practice.

II. Who Must Comply With the Rule?

A. Generally

Anyone who is a "funeral provider" is covered by the Funeral Rule and must comply with all of its requirements. The Rule defines a "funeral provider" as "any person, partnership or corporation that sells or offers to sell funeral goods and funeral services to the public." Only those who sell or offer to sell *both* funeral goods *and* funeral services are covered.

Funeral goods and funeral services are separately defined by the Rule. Funeral goods consist of all products sold to the public for use in connection with funeral services. Funeral services consist of two types of functions:

1. Those services used to care for and prepare human bodies for burial or other disposition; and

2. Those services used to arrange, supervise or conduct the funeral or disposition.

Both types of services must be offered in order to come within the definition of "funeral services."

Thus, in order to be classified as a funeral provider and therefore covered by the Rule, you must offer to sell or sell funeral goods *and* offer to provide or provide services to care for and prepare remains for disposition *and* offer to provide or provide services to arrange, supervise or conduct the final disposition.

Illustration #1: You operate a traditional funeral home selling various caskets, burial clothes and/or alternative containers. In addition, you consult with the family and clergy, arrange and direct the ceremony, prepare and file required notices, and/or coordinate with the cemetery or crematory. Other services you provide include embalming, facilities for viewing, and/or preparation of the body for disposition. Are you covered by the Rule?

Yes. You are a funeral provider as defined by the Rule. The sale or offering for sale of caskets, burial clothes and/or alternative containers meets the definition of funeral goods. In addition, the professional services you offer include both care for and preparation of human bodies for burial or other disposition, and also arrangement, supervision or conducting of the funeral and/or disposition.

Illustration #2: You have a traditional funeral practice in that you sell various funeral goods, prepare remains and arrange for final dispositions. However, you have separately incorporated the sale of funeral goods from the provision of funeral services. Are you covered by the Rule?

Yes. Under these circumstances, you must comply with the Rule because as a person who sells funeral goods and funeral services you meet the definition of a funeral provider. The structuring or restructuring of a provider's business will not be considered effective to avoid being covered by the Rule.

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[1] 16 CFR Part 453.

[2] 47 FR 42260.

[3] 48 FR 45537 (October 6, 1983). The Rule provisions which became effective on January 1, 1984 are: §§ 453.1, 453.3(a)(1)(i), 453.3(a)(2)(i), 453.3(a)(2)(ii), 453.3(b)(1)(i), 453.3(c)(1)(i), 453.3(d)(1)(i), 453.3(e), 453.3(f)(1)(i), 453.8, and 453.9.

[4] The Rule provisions which became effective on April 30, 1984 are: §§ 453.2, 453.3(a)(1)(ii), 453.3(a)(2)(ii), 453.3(b)(1)(ii), 453.3(b)(2), 453.3(c)(1)(ii), 453.3(c)(2), 453.3(d)(2), 453.3(f)(1)(ii), 453.3(f)(2), 453.4, 453.5, 453.6, 453.7, and 453.10.

[5] 49 FR 559 (January 5, 1984).

Illustration #3: You have a traditional funeral practice in that you sell various funeral goods, prepare remains and arrange for final dispositions. A consumer wants you to arrange a funeral but is providing his own casket and does not want to purchase any other funeral goods from you. Is this transaction covered by the Rule even though you are not selling funeral goods to this particular consumer?

Yes. If you sell or offer to sell funeral goods and funeral services you must comply with the Rule's provisions for every consumer, even for those consumers who wish to purchase only goods or only services.

Illustration #4: You have a traditional funeral practice in that you sell various funeral goods, prepare remains and arrange for final dispositions. Rather than maintaining your own casket selection room, you use a manufacturer's showroom to sell caskets. Are you covered by the Rule?

Yes. You are selling or offering to sell funeral goods and funeral services and therefore must comply with the Rule's provisions. This is true even though you are utilizing a manufacturer's showroom to sell caskets. Although the casket manufacturer is not covered by the Rule, as discussed in Illustration No. 5 below, you still meet the definition of a funeral provider and must comply with the Rule.

Illustration #5: You are a casket salesman or a person selling caskets or coffins or kits to make caskets. Are you covered by the Rule?

No. Casket salesmen and others, if they only sell caskets, coffins or casket kits and do not sell or offer to sell services relating to disposition, are not covered under the Rule. They are only selling or offering to sell funeral goods. They must also sell or offer to sell funeral services in order to be covered.

Illustration #6: You operate a cemetery and want to know if you must comply with the Rule. Your cemetery sells outer burial containers and grave liners. Are you covered by the Rule?

No. Under the Rule's definitions, although you sell funeral goods, you would *not* be considered a funeral provider since you only arrange or conduct final dispositions and do not prepare remains for final dispositions. Thus, a cemetery generally only performs one of the functions included in "funeral services." It would have to provide *both* in order to be covered under the Rule.

Illustration #7: Is a cemetery which also operates a funeral home covered under the Rule?

Yes. All funeral providers are covered by the Rule, including those which are operated by a cemetery. As long as you provide funeral goods and services, you must comply with the Rule's requirements. Cemetery/mortuary combinations do not have to comply with the Rule, however, when consumers inquire solely in person about cemetery goods from the cemetery and do not inquire about funeral arrangements or the prices of funeral goods and services.

Illustration #8: You operate a direct disposition company which arranges for direct cremations and sells urns for cremated remains. Are you covered by the Rule?

Yes. In this situation, the Rule would cover the direct disposition company. The company is selling funeral goods (i.e., urns) and provides funeral services in that it cares for and prepares the bodies for the direct cremation *and* arranges the final disposition.

Illustration #9: Same situation as above except that your direct disposition company does not sell urns, alternative containers or any other funeral goods. Are you still covered?

No. In this situation, the direct disposition company would not be covered since it provides *only* mortuary and disposition services. To be covered by the Rule, you must provide both funeral goods *and* funeral services.

Illustration #10: Are crematories which sell urns and provide services to care for and prepare human bodies for final disposition covered by the Rule?

Yes. In this situation the crematory meets the definition of a funeral provider. It sells funeral goods and conducts the disposition, thereby satisfying the supervisory prong of the definition of a funeral provider. In addition, the crematory in this illustration provides those services used to care for and prepare human bodies for final disposition. However, if the crematory did not provide services to care for and prepare human bodies for final disposition, it would not be covered by the Rule. In the case of a crematory, final disposition would be the cremation.

B. Pre-Need Contracts Negotiated After the Effective Date of Rule

The Rule's coverage does extend to funeral providers who sell pre-need contracts after the effective date of the Rule. That means that you must comply with all the relevant portions of the Rule when you discuss pre-need arrangements with consumers.

Illustration #1: You operate a traditional funeral home. After the Rule became effective, a family enters your establishment to pre-plan their funeral arrangements. Does the Rule apply?

Yes. The Rule applies in both pre-need and at-need circumstances. Therefore, you must comply with all of the relevant portions of the Rule when you discuss funeral arrangements.

Illustration #2: Same circumstances as above, but you sell pre-need contracts door to door, rather than solely in your establishment. Does the Rule apply?

Yes. The Rule requires funeral providers to comply whenever consumers inquire about funeral goods and services. Thus, the obligation of a funeral provider to comply with the Rule is not limited to discussions within the funeral home. If you visit a consumer, knowing that you are going to discuss pre-need arrangements, you should be prepared to comply with the Rule.

Illustration #3: You sell pre-need contracts to consumers at their residences on behalf of several funeral homes. You do not yourself, however, operate an establishment that provides funeral goods and services. Does the Rule apply?

Yes. In such a situation, you are an agent of a funeral provider. Therefore, you should be prepared to comply with the Rule.

C. Pre-Need Contracts Negotiated Prior to Effective Date of Rule

The Funeral Rule's coverage does not extend to pre-existing contracts such as pre-need arrangements or burial insurance policies payable in funeral goods and services. Specifically, the portions of the Rule which prohibit certain oral or written misrepresentations do not apply to arrangements made prior to January 1, 1984.[6] In addition, those portions of the Funeral Rule which impose an affirmative obligation upon funeral providers (i.e., price lists, itemization, telephone disclosures, written disclosures) do not apply to arrangements made prior to April 30, 1984.[7]

Illustration #1: Before the Rule became effective, a consumer made a pre-need arrangement with your funeral home for specific funeral goods and services. The consumer dies after the Rule went into effect and the consumer's spouse comes to you to have you provide exactly those goods and services specified in the pre-need

[6] Sections 453.1, 453.3(a)(1)(i), 453.3(a)(2)(i), 453.3(b)(1)(i), 453.3(c)(1)(i), 453.3(d)(1)(i), 453.3(e), 453.3(f)(1)(i), 453.8 and 453.9.

[7] Sections 453.2, 453.3(a)(1)(ii), 453.3(a)(2)(ii), 453.3(b)(1)(ii), 453.3(b)(2), 453.3(c)(1)(ii), 453.3(c)(2), 453.3(d)(2), 453.3(f)(1)(ii), 453.3(f)(2), 453.4, 453.5, 453.6, 453.7, and 453.10.

contract. Under these circumstances, is the transaction covered by the Rule?

No. In this situation, if you are fulfilling the obligations under a pre-existing contract, the provisions of the Rule would not apply.

Illustration #2: Same situation as Illustration #1 except that the spouse wants to change the funeral arrangements specified in the pre-need contract. Does the Rule apply?

Yes. In this situation the spouse has asked about funeral arrangements. Therefore, the provisions of the Rule would apply because the funeral provider is offering funeral goods and services.

III. What Price Disclosures Must Be Made? Section 453.2

A. Generally

The price disclosure provisions of the Rule contain six different parts: (1) Telephone Price Disclosures, (2) Casket Price List, (3) Outer Burial Container Price List, (4) General Price List, (5) Statement of Funeral Goods and Services Selected, and (6) a provision allowing the use of additional methods of pricing.

To assist you in understanding what the Rule requires, these compliance guides will discuss each part of the price disclosure provisions section by section. In addition, sample price lists have been appended to illustrate the Rule provisions. It is not necessary for you to adopt the sample price lists. They are only examples. In addition, the fact that the FTC's staff developed these particular price lists in no way implies that this format is the only appropriate one. In fact, there may be a variety of formats which would meet the Rule's requirements. But the model forms provide guidance on what the Rule requires and may help to answer questions you may have.

This section deals with price disclosures, but other portions of the Rule prohibit misrepresentations and require that you include certain disclosures on the General Price List. While those requirements will be discussed here, other portions of these guides should be consulted for a more extensive discussion of those parts of the Rule.

B. Price Disclosures Over the Telephone: Section 453.2(b)(1)

The Funeral Rule requires that under certain circumstances funeral providers are to make price information available over the telephone. The reason for this requirement is to enable consumers who are under obvious time pressures to do some price comparisons before selecting a funeral home.

This section of the Rule has two steps. First, anyone who calls and asks about the "terms, conditions, or prices" of funeral arrangements must be told that price information is available over the telephone. Second, the Rule requires that you provide two types of information in response to questions about prices or offerings by these callers. First, the caller must be given responsive information about offerings or prices from the Outer Burial Container Price List, Casket Price List and General Price List. Second, any other questions about offerings or prices must be answered with any other information that is readily available.

Illustration #1: You are a funeral provider. At your establishment, you receive a telephone call from someone who wants to know if you sell metal caskets for under $500.00. Do you need to disclose information about prices?

Yes. The caller has asked about the "terms, conditions, or prices" of a funeral good. Therefore, you should tell the caller that price information is available over the phone, and answer the question from the information listed on your Casket Price List. No specific wording is required. You are free to respond in your own language, and can adapt your answer to the needs of each particular conversation.

Illustration #2: You are a funeral provider who receives a telephone call from a consumer who wants to know if you perform funerals for a particular religion. Do you have to inform the caller that price information is available over the telephone?

No. The caller has not asked about the "terms, conditions, or prices" at which funeral goods or funeral services are offered. However, the question must be answered because the caller has asked about your offerings and the information is readily available.

Illustration #3: You are a funeral provider who receives a telephone call from a consumer who wants to know about the business hours of your establishment. Do you have to inform the caller that price information is available over the telephone?

No. Again, the only time funeral providers need to tell callers that price information is available over the telephone is when they ask about "terms, conditions, or prices". Business hours do not trigger the disclosure of price information. Similarly, questions regarding the location of the funeral home, whether a particular person is employed by the provider, or other questions about the operation of the funeral home do not trigger the disclosure of price information.

Illustration #4: Can a telephone answering machine be used to disclose the required information?

Yes. You may use any method you prefer to provide the required disclosures. You may use an answering service to record incoming calls. If you prefer to use a machine which lists the goods and services from the price lists, you may. You will need, though, to have a method to respond to callers' questions on an individual basis. This method may just be notifying consumers that if they need additional information they may call a specified number and the hours available for such information.

Illustration #5: Can a funeral provider require that callers provide their name, address, and/or phone number as a condition of providing the required disclosures?

No. While you may request such information, if the consumer refuses to provide it you must still supply accurate information from the price lists and any other information which reasonably answers the questions and which is readily available.

Illustration #6: You are a funeral provider who receives a phone call asking if you will pick up a body from the place of death and transfer it to your establishment. Do you need to make the required price disclosures?

Yes. The caller has asked about the "terms, conditions, or prices" of a funeral service and, therefore, the telephone price disclosure provisions of the Rule are triggered.

Illustration #7: Does the Rule require specific price information to be disclosed by the first person who answers the phone?

No. While the Rule does cover funeral providers and their employees and agents, if some of your employees do not possess the substantive knowledge to respond to phone inquiries, the uninformed employees could simply refer calls to someone who was familiar with prices. However, because the information would almost always be available on the price lists themselves, part-time or untrained employees should be able to simply tell persons that price information is available over the telephone and answer questions about prices from the preprinted lists. Should you desire, you are free to have these questions referred to a funeral director. However, if no funeral director is available, the person answering should tell callers who ask about the "terms, conditions, or prices" of funeral goods or services that price information is available over the telephone, and

answer questions from information on the price lists. If there are questions which cannnot be properly answered by referrring to the price lists, and a funeral director is not available, it is permissible to take a message and have a funeral director call the consumer later. However, calls requesting price information cannot be made wholly subject to the availability of a funeral director.

Illustration #8: You are a funeral provider who does not use a telephone answering service or machine during non-business hours. At midnight, a consumer dials your business phone number and the call is automatically transferred to your residence. The consumer requests price information in order to pre-plan a funeral. Does the Rule require you to provide price information to callers in such a situation?

No. In such a situation, you may inform the caller that you will provide information about the prices of the funeral goods and services you offer during the normal business hours of your establishment. However, if the caller was inquiring about an *at-need* situation and it is your practice to make funeral arrangements during non-business hours then the Rule would require you to make the required price disclosures at that time.

Illustration #9: You are a funeral provider who uses a telephone answering service. Is that service subject to the Rule and therefore required to make price information available to callers?

No. To the extent that a funeral home uses an independent telephone answering service that simply takes messages, that service is not subject to the provisions of the Rule. Therefore, the service would not be required to provide price information.

Illustration #10: You are a funeral provider who is making arrangements for a funeral with a family which is in your establishment. There is no other employee available. A telephone call is received from a person who is requesting price information. Does the Rule require you to disrupt the arrangements conference to make the required price disclosures at that time?

No. In such a situation, you may inform the caller that you will return the call.

c. Price Disclosures for Caskets: Section 453.2(b)(2)

This provision of the Rule requires funeral providers who sell or offer to sell caskets or alternative containers to prepare a Casket Price List. The list is to be shown to persons who inquire in person about caskets or alternative containers. Thus, you should show consumers the casket price information when the subject is raised. You do not have to force consumers to read the information, but you should allow them to read it if they desire. You do not have to give consumers the list to keep, though you can if you wish. The list must disclose at least the following information:

(1) The name of the funeral provider's place of business;

(2) A caption describing the list as a "casket price list;"

(3) The retail prices of all caskets and alternative containers offered which do not require special ordering;

(4) The effective date of the price list; and

(5) Enough information to identify each offering.

Illustration #1: Do funeral providers have to list any descriptive information about the caskets and alternative containers they offer in addition to the price?

Yes. In addition to prices, funeral providers must supply a certain amount of descriptive information about each casket offered, including alternative containers if direct cremations are offered. Enough information should be provided to enable consumers to identify the specific casket or container. Thus, the price list could include a description of the exterior appearance, including the gauge of metal or type of wood, the exterior trimming, and the type of interior fabrics or other material. Any other information you desire can be disclosed as well, such as a photograph or model number. However, a photograph or model number alone would not be sufficient. The descriptions in the model casket price list should prove helpful to you. (See Attachment 1).

Illustration #2: Does the Rule require that caskets be listed in any particular order?

No. Any arrangement of the caskets that you prefer is allowed. There is no requirement that caskets be listed in any particular order, either least to most expensive or vice versa. However, all disclosures must be made in a clear and conspicuous manner.

Illustration #3: Does the Rule require caskets which must be specially ordered to be listed on the casket price list?

No. This provision only applies to caskets that are usually offered for sale and do not require special ordering. Thus, all caskets which are in stock and available need to be on the list. In addition, the alternative containers offered for direct cremation, if that is a service you provide, need to be listed on the casket price list. However, if caskets or alternative containers must be ordered specially you need not include them on your price list. Special ordering means procuring a casket or container that is not in stock and not part of the regular offerings you provide to your customers.

Illustration #4: Are there a variety of formats allowed to provide casket and alternative container price information to consumers?

Yes. Funeral providers may choose among a variety of different disclosure formats: A separate price list for caskets and alternative containers; notebooks, brochures, or charts; inclusion of this information on the General Price List; or any other format desired, as long as the information required by the Rule is disclosed. The first of the methods is to provide a separate price list for caskets and alternative containers. This must be typewritten or printed and must contain all of the disclosures explained above. The second method is to use notebooks, brochures or charts, which may be more convenient for some funeral providers, particularly those with low inventory levels. Using this method, for example, the funeral provider could prepare a three ring binder with inserts for each type of offering. As the supply of a particular item on the list was exhausted, the page would be removed. Similarly, if new stock arrives, the funeral provider would simply add an insert about that product with the required information. Additionally, some funeral providers may prefer to place the required information onto the General Price List. Finally, funeral providers are permitted to use any other format they desire if the information required by the Rule is disclosed.

Illustration #5: You are a funeral provider who does not have caskets on display in your establishment. The consumer purchases the casket from you. However, you use a local manufacturer's casket showroom. Do you need to prepare a casket price list?

Yes. Funeral providers who use a manufacturer's or supplier's casket showroom in lieu of their own casket selection room must still prepare casket price lists. This does not mean that all of the manufacturer's or supplier's caskets have to be listed. Rather, you should list those caskets which are part of the regular offerings you provide to your customers. In the context of a casket manufacturer's or supplier's showroom, the caskets listed would generally be limited to those in the showroom. However, if the funeral provider elects to offer any or all of the caskets in the warehouse for sale, then these caskets

must be listed on the casket price list. The casket price list should be offered by the funeral provider to the consumer upon beginning discussion of, but in any event before the consumer is shown the offerings. Therefore, if the family and funeral provider begin discussion of casket offerings at the funeral home, the funeral provider must offer the casket price list to the family at that time. If the family and funeral provider do not discuss casket offerings until arrival at the manufacturer's or supplier's showroom, then the casket price list is not required to be offered until that time. The obligation to retain records, as required by § 453.6 of the Rule, rests with the funeral provider.

Illustration #6: Does the Rule require you to print a new casket price list each time you sell a casket if the sale means that one of the caskets on the list will not be available for a short period of time?

No. The Rule does not require funeral providers to prepare a new price list each time a casket is sold. If a casket is temporarily out of stock, the funeral provider can simply inform the consumer of this fact when the price list is given to the consumer. In the context of a manufacturer's or supplier's showroom, the funeral provider can notify the consumer of any modifications to the available selections upon arrival at the showroom. This notification can be made by use of a supplemental price list describing the offerings that have been added or deleted. This supplemental price list is not required to have the name of the funeral provider on it or its effective date. However, it might be desirable to have the effective date listed to assist your compliance with the recordkeeping requirements of § 453.6.

Illustration #7: Does the casket price list have to be given to consumers for their retention?

No. The funeral provider merely has to make it available to consumers who inquire in person about the offerings or prices of caskets or alternative containers. You do not have to give a copy of the casket price list to a consumer to keep. The consumer simply must have the opportunity to look at the list before discussing your offerings or seeing the caskets or alternative containers.

Illustration #8: Can a funeral provider put the information required for the casket price list on the General Price List rather than having a separate document, notebook, chart, or brochure?

Yes. Funeral providers do not have to make a casket price list available if they prefer to place the required information on the General Price List. Of course, if this option is chosen, the information must be in a form that consumers can retain after they leave your establishment.

Illustration #9: You are a funeral provider who, in addition to offering the caskets you have on display, also offers "customized" caskets. These caskets may be available in a variety of interior materials and designs, exterior hardware, and/or finishes. Are these "customized" caskets required to be included on your casket price list?

No. Customized caskets are special orders and therefore are not required to be included on the casket price list. In addition, if caskets that you offer for sale are available in a variety of options, it would be sufficient to simply note on the casket price list that the offerings are available in a variety of interior materials and designs, exterior hardware, and finishes. If a consumer orders a casket under those circumstances, the funeral provider would describe the casket and note the price on the statement of goods and services selected.

Illustration #10: A funeral provider carried a casket for several years that was used for pre-need and at-need funerals. The funeral provider no longer wishes to offer the casket for sale as a general offering but keeps it in inventory for the sole purpose of fulfilling previously sold pre-need contracts. Does the Rule require the funeral provider to include the casket on the casket price list?

No. The rule requires only those caskets that are regularly offered for sale to be listed. Under these circumstances, the funeral provider is not currently offering the casket but is only fulfilling a pre-existing contractual obligation. Therefore, the casket need not be included on the casket price list.

Illustration #11: A funeral provider carried a casket for several years that was used for pre-need and at-need funerals. The casket is no longer being manufactured and is therefore not available. The pre-need contract specifies that a funeral provider may substitute merchandise of equal value in the event the contracted-for merchandise is not available. Must the funeral provider present a casket price list to the consumer in such a situation?

No. The selection of the substitute casket is governed by the pre-need contract. In this situation, the funeral provider need not present a casket price list to the consumer. The funeral provider should simply comply with the terms of the contract by supplying a casket of similar quality.

D. Price Disclosures for Outer Burial Containers: Section 453.2(b)(3)

This provision of the Rule requires funeral providers who sell or offer to sell outer burial containers to prepare a price list for these particular funeral goods. The list is to be shown to persons who inquire in person about outer burial container offerings or prices upon beginning discussion of, but in any event before showing the containers. The list must disclose at least the following information:

(1) The name of the funeral provider's place of business;

(2) A caption describing the list as an "outer burial container price list;"

(3) The effective date of the price list;

(4) The retail prices of all outer burial containers offered which do not required special ordering; and

(5) Enough information to identify each container.

In addition, a separate section of the Rule requires the following disclosure to be placed in immediate conjunction with the price disclosures:

> In most areas of the country no state or local law makes you buy a container to surround the casket in the grave. However, many cemeteries ask that you have such a container so that the grave will not sink in. Either a burial vault or a grave liner will satisfy these requirements.

Illustration #1: You are a funeral provider who does not sell or offer to sell outer burial containers. Do you have to prepare an outer burial container price list?

No. Only those funeral providers who sell or offer to sell outer burial containers need to prepare a price list for these products. Moreover, the Rule does not require these goods to be offered for sale.

Illustration #2: Does the Rule require the containers to be listed in any particular order?

No. Any arrangement of the containers that you prefer is allowed. There is no requirement that containers be listed in any particular order, either least to most expensive, or vice versa. However, all disclosures must be made in a clear and conspicuous manner.

Illustration #3: Does the Rule require containers which must be specially ordered to be listed on the price list?

No. This provision only applies to containers that are usually offered for sale and do not require special ordering. Thus, all containers which you keep in inventory and are available should be listed. However, any containers that need to be ordered specially do not need to appear on the list.

Illustration #4: Are there a variety of formats allowed to provide outer burial container price information to consumers?

Yes. Funeral providers may choose among a variety of different disclosure formats: A separate price list for outer burial containers; notebooks, brochures, or charts; inclusion of this information on the General Price List; or any other format, as long as the information required by the Rule is disclosed. The first of the three methods is to provide a separate price list for outer burial containers. This must be typed or printed and must contain all of the disclosures explained above. The second method, using notebooks, brochures or charts may be more convenient for some funeral providers. Additionally, some funeral providers may prefer to place the required information onto the General Price List. Finally, funeral providers are permitted to use any other format which discloses the required information.

Illustration #5: Does the Outer Burial Container Price List have to be given to the consumer for their retention?

No. Funeral providers who prepare either a separate container price list or who use notebooks, brochures, or charts merely need to show it to consumers who inquire in person about the offering or prices of containers. If these formats are used, you do not have to give a copy to the consumer to keep. However, if the funeral provider decides to place the required disclosures on the General Price List rather than use a separate list, or notebooks, brochures or charts, the list must be given to consumers for their retention, if they desire.

Illustration #6: You are a funeral provider who does not have outer burial containers on display in your establishment. The consumer purchases the outer burial container from you. However, you use a local manufacturer's showroom for outer burial containers. Do you need to prepare an outer burial container price list?

Yes. Funeral providers who use a mnaufacturer's or supplier's showroom in lieu of their own selection room must still prepare outer burial container price lists. This does not mean that all of the manufacturer's or supplier's outer burial containers have to be listed. Rather, you should list those outer burial containers which are part of the regular offerings that you provide to your customers. In the context of a manufacturer's or supplier's showroom, the items listed would generally be limited to those in the showroom. However, if the funeral provider elects to offer any or all of the outer burial containers in the warehouse for sale, then these offerings must be included in the outer burial container price list. The outer burial container price list should be offered by the funeral provider to the consumer upon beginning discussion of, but in any event before the consumer is shown the offerings. Therefore, if the family and funeral provider begin discussion of outer burial container offerings at the funeral home, the funeral provider must offer the outer burial container price list to the family at that time. If the family and funeral provider do not discuss outer burial container offerings until arrival at the manufacturer's or supplier's showroom, then the outer burial container price list is not required to be offered until that time.

E. Price Disclosures for Funeral Goods and Services: Section 453.2(b)(4)

(1) Itemization

The keystone of the Funeral Rule is the General Price List. It requires that you itemize certain prices for the various funeral goods and services that you offer so that consumers who wish to can compare prices or choose those elements of a funeral that they desire. In order to do this the Rule requires that at a minimum you itemize prices for seventeen specified goods and services, if you offer those goods and services. You may also itemize prices for other goods and services you offer. Note that the Rule does not prohibit you from offering package funerals as long as itemization is an option for consumers who arrange funerals at your establishment. (See Part III G of these guidelines for a discussion of package pricing under the Rule).

A separate price should be assigned to each of the funeral goods and services which you regularly offer to your customers.

The Rule requires, for example, that you itemize the price for use of a hearse, if that is a funeral good you offer to customers. That price does not have to be further broken down into separate costs for loading and unloading, gasoline, washing the hearse, paying the driver, etc.

This example applies to other items as well. As long as you provide a separate price for each basic part of the funeral that you offer to consumers, you will be in compliance.

(2) Information on the General Price List

The General Price List must contain a caption at the top of the page calling it a "General Price List." This caption must also contain the date the prices on the General Price List became effective and the funeral provider's name, address and telephone number. The list must be typed or printed and consumers must be given copies to keep.

There are several distinct parts of the General Price List. The rule provides some flexibility in the manner in which you choose to design the General Price List. The following guides point out those areas of the Rule which allow you flexibility in preparing your price lists.

To assist you in understanding what the Rule requires, sample price lists have been appended to illustrate the Rule provisions. These model forms provide guidance on what the Rule requires and may help to answer questions you may have.

a. *Basic Information.* This first section of the General Price List must contain two general disclosures. The first disclosure is a general statement on itemization which must precede the list of prices. The statement must read:

> The goods or services shown below are those we can provide to our customers. You may choose only the items you desire. If legal or other requirements mean you must buy any items you did not specifically ask for, we will explain the reason in writing on the statement we provide describing the funeral goods and services you selected.

If you choose to require a separate charge for your services that a consumer may not decline, an additional sentence must be inserted between the second and third sentences of the above disclosure. That extra sentence reads:

> However, any funeral arrangements you select will include a charge for our services.

A second disclosure that must be included on this part of General Price List deals with cash advance items. The required disclosure must read as follows:

> This list does not include prices for certain items that you may ask us to buy for you, such as cemetery or crematory services, flowers, and newspaper notices. The prices for those items will be shown on your bill or that statement describing the funeral goods and services you selected.

The Rules does not prohibit you from charging consumers for arranging these items but if you charge consumers more than the actual cost, or "receive and retain a rebate, commission or trade or volume discount" which is not passed on to the consumer, an additonal sentence must be added at the end of the above disclosure, stating: "We charge you for our services in buying these items." The cash advance disclosures must be positioned in immediate conjunction with the main group of price disclosures; that is, it

must precede them, be at the end, or be included among them.

b. *Forwarding and Receiving Remains, Direct Cremations and Immediate Burials: Sections 453.2(b)(4)(ii)(A)–(D).* The Rule requires funeral provider to disclose their prices for forwarding and receiving remains, direct cremations and immediate burials. Unlike the remainder of the goods and services which must be disclosed on the General Price List, any charges for the professional services of the funeral provider should be included in the total price of these four types of services. In addition, a brief description of the professional services provided must also be disclosed.

(i) *Forwarding of Remains to Another Funeral Home.*— If you provide this service for consumers who request it, you must disclose the price you charge. Again, in setting a charge for this you are free to choose any pricing method that suits your needs, so long as a consumer is able to obtain an accurate indication of the price from this segment of the General Price List. The Rule requires that you include any charge for your professional service in the prices for forwarding remains. In addition, you must include a brief list of the services you provide in conjunction with this item. Note that the disclosure required in the section dealing with charges for your services includes a brief notice that your fee for professional services does not apply to the services involved in forwarding remains.

(453.2(b)(4)(ii)(A) and 453.2(b)(4)(iii)(C)(1))

(ii) *Receiving Remains from another Funeral Home.*—This is treated basically the same way as the requirement on forwarding remains. It only needs to be included on your General Price List if you provide it, and you must include a list of the services you provide. The Rule requires that you include any charge for your professional services in the price you charge for receiving remains.

(453.2(b)(4)(iii)(B)).

(iii) *Direct Cremations.*—You only need to include this on your price list if it is a service that you provide. This is another area in which the fee for your professional service must be included in the quoted price.

The Rule requires you to list the price range for direct cremations if you offer more than one basic type of direct cremation.

First, you must give a price for a direct cremation if the consumer provides the container. This, of course, means that you must allow consumers to provide their own container if they desire, as long as the container is suitable in meeting any state or crematory requirement.

Second, you must provide a price for each direct cremation that occurs with an unfinished wood box or alternative container. This means that if you offer direct cremations you must make either an unfinished wood box or alternative container available for consumers who request them. The Rule also requires that you provide a disclosure about unfinished wood boxes or alternative containers. It must be placed in immediate conjunction with the prices for direct cremations and it must read as follows:

> If you want to arrange a direct cremation, you can use an unfinished wood box or an alternative container. Alternative containers can be made of materials like heavy cardboard or composition materials (with or without an outside covering), or pouches of canvas.

Finally, you must include a description of the professional services you include in each price and a description of the container, if the consumer does not provide one, for any quoted price. The description of the container need not be extensive. It serves the same purpose as the descriptive provisions for caskets—informing consumers about what they are buying.

(453.2(b)(4)(ii)(C), 453.3(b)(2))

(iv) *Immediate Burial.*—This provision is similar to the one for direct cremations. There is only one difference. You are not required to make an alternative container or unfinished wood box available for immediate burials. Therefore, if you offer immediate burials but not direct cremations, the rule does not require that you make alternative containers available. You may, however, wish to provide such containers, and if you do so you need to quote a price for this and include a list of the basic services that you provide that are included in that fee.

(453.2(b)(4)(ii)(D))

c. *Other Items Which Must Be Itemized If Offered.*—The Rule also requires you to include on your General Price List your charges for several other specific items if offered for sale. The charges for each of these items which are required to be listed separately on the General Price List (i.e. transfer of remains to funeral home, embalming, other preparation, etc.) must include the fees for whatever service your provide in conjunction with the provision of each item. However, you need not include any fee for the services of the funeral director and staff that the Rule allows you to list separately on the General Price List (i.e. conduction the arrangements conference, planning the funeral, obtaining necesseary permits, etc.)

(i) *Transfer of Remains to Funeral Home.*—Your charges for the transfer of the remains to the funeral home must be disclosed. You may choose any pricing method you desire, such as by mileage, an hourly rate or a flat fee. The charges for this item must include the fees for whatever service you provide in conjunction with the provision of this specific item. This holds true for each of the other price disclosure portions of the Rule following in this section.

(§ 453.2(b)(4)(ii)(E))

(ii) *Embalming.*—You must disclose what you charge for embalming on the General Price List. In addition, the Rule requires that you include an affirmative disclosure in this part of your General Price List that must read:

> Except in certain special cases, embalming is not required by law. Embalming may be necessary, however, if you select certain funeral arrangements, such as a funeral with viewing. If you do not want embalming, you usually have the right to choose an arrangement which does not require you to pay for it, such as direct cremation or immediate burial.

(§§ 453.2(b)(4)(ii)(F), 453.3(a)(2)(ii))

(iii) *Other Preparation of the Body.*— If you perform other preparations of the body you should provide a price for that service. If you wish you may also provide a brief note on what this includes, such as cosmetic touches, clothing, etc. But you do not have to break down the cost for each of these preparation services unless you want to.

(§ 453.2(b)(4)(ii)(G)

(iv) *Use of Facilities for Viewing.*— You may use whatever method you prefer to disclose your charge for this service. For example, one workable method may be to list the different viewing locations within the funeral home and provide charges by day, half day, or hour, depending upon the local customs in your area.

(§ 453.2(b)(4)(ii)(H))

(v) *Use of Facilities for Funeral Ceremony.*—If you provide facilities for the funeral ceremony you must provide a price. Again, the method of doing this is up to each funeral provider.

(§ 453.2(b)(4)(ii)(I))

(vi) *Other Use of Facilities.*—If you offer the use of other facilities in the funeral home you need to list them on the General Price List. Thus if you provide other facilities, such as a tent and chairs for a graveside service, those

prices should be disclosed in this part of your General Price List.

(§ 453.2(b)(4)(ii)(I))

(vii) *Hearse.*—You must disclose the price you charge for use of a hearse. You may use any method of setting the price that you choose.

(§ 453.2(b)(4)(ii)(K))

(viii) *Limousine.*—If you provide the use of a limousine for family, clergy, etc., you must disclose this price on the General Price List.

(§ 453.2(b)(4)(ii)(L))

(ix) *Other Automotive Equipment.*—If you provide other automotive equipment, such as a flower car, family sedan or pallbearers' car, you must disclose the price and include a general description.

(§ 453.2(b)(4)(ii)(M))

(x) *Acknowledgement Cards.*—If you sell those items or if you perform the service of filling out and sending these for consumers you must quote a price on the General Price List.

(§ 453.2(b)(4)(ii)(N))

d. *Casket Prices.* Disclosure of prices for caskets may be handled in one of two ways: on the General Price List or on a separate Casket Price List. If a separate Casket Price List is provided the General Price List must still briefly discuss casket prices. All that is required is that the range of casket prices be disclosed and an accompanying statement be included that says: "A complete price list will be provided at the funeral home."

(§ 453.2(b)(4)(iii)(A)(1))

The second option is to put all casket prices on the General Price List. The explanation for doing this is contained in the section on casket prices dealt with earlier. Basically this simply requires that you provide a description and price for each type of casket you provide.

(§ 453.2(b)(4)(iii)(A)(2))

e. *Outer Burial Container Prices.* The next part of the Rule deals with Outer Burial Container prices on the General Price List. If you offer Outer Burial Containers you can either provide a separate price list or include these prices on the General Price List. If you provide a separate price list the General Price List must contain a brief statement of the price range for Outer Burial Containers and be accompanied by the statement: "A complete price list will be provided at the funeral home." If you choose to put these prices on the General Price List you must comply with the Outer Burial Container price list requirements of describing the types and prices of the Outer Burial Containers you offer.

(§ 453.2(b)(4)(iii)(B))

f. *Charges For Professional Services of the Funeral Director.* The final item that must be discussed on the General Price List is a provision for the cost of the professional services provided by the funeral director and staff. This item is intended to include, for example, the fee for the services you perform in arranging and supervising the funeral, securing necessary permits and notices, and coordination of the cemetery and/or crematory arrangements. It does not include the charges for the services entailed in forwarding and receiving remains, direct cremations and immediate burials and the services associated with the other funeral goods and services specifically enumerated in the Rule that must be listed separately on the General Price List, as discussed above. The Rule requires that the prices for those particular items include the fee for the services you perform in providing those goods and services.

The charges for your professional services, however, can be presented on the General Price List in one of two different ways. The first is to set these out separately and the second is to include your service charges in the price of caskets. Alternative 1 of the appended sample General Price Lists is designed to deal with charges for services set out separately and Alternative 2 of the appended sample General Price Lists includes those charges in casket prices. The choice of method is one that each funeral provider will want to make after considering what will be best for the establishment.

The first method is to disclose these service charges separately. If you price your services in this manner you must include a brief statement of the principal services you provide and the cost. If a charge for your services is something consumers may not decline you must also provide the following disclosure:

This fee for our services will be added to the total cost of the funeral arrangements you select. (This fee is already included in our charges for direct cremations, immediate burials, and forwarding or receiving remains.)

The statement in parenthesis simply lets consumers know that you are not charging them twice for your services for direct cremations, immediate burials, and forwarding or receiving remains.

The second method you can employ in charging for your services is to include the price of your services in the cost of caskets you offer for sale. If you choose this method of pricing you must include a disclosure stating:

Please note that a fee for the use of our services is included in the price of our caskets. Our services include (specify).

You should include a brief list of the principal services you provide in this disclosure where it says "specify." You do not have to provide separate prices for these services.

This disclosure must be placed in the part of the General Price List dealing with casket prices. If you have a separate Casket Price List this should be included in conjunction with the statement of casket price ranges on the General Price List. If you include casket prices on the General Price List this disclosure must appear in conjunction with your list of those prices.

(Section 453.2(b)(4)(iii)(C))

(3) Illustrations Regarding the General Price List

The Rule requires the General Price List to be given to consumers who inquire in person about funeral arrangements or the price of funeral goods or services. The list must be offered to consumers upon beginning discussion either of funeral arrangements or of the selection of any funeral goods or funeral services.

Illustration #1: A family enters your establishment to discuss funeral arrangements for a relative. When the subject is raised, you offer them a copy of your General Price List. Are you in compliance with the Rule?

Yes. The family has inquired in person about funeral arrangements. Therefore, the list must be offered to them.

Illustration #2: You are a funeral provider who receives a phone call from a consumer who asks you about the price of a direct cremation. In compliance with the telephone price disclosure provisions of the Rule, you inform them of the price you charge for this service. The caller then asks you to send them a copy of your General Price List. Does the Rule require you to send them a copy?

No. The Rule requires that the General Price List be given only to consumers who inquire in person about funeral arrangements or the prices of funeral goods or services. It does not require funeral providers to send price lists to consumers who telephone and request a copy.

Illustration #3: You are a funeral provider who arranges for tours of your establishment by students. During one such tour, a student asks you about the price of embalming. Does the Rule require you to give the student a copy of your General Price List?

No. Although the student asked about the price of a funeral service, the Rule does not require funeral providers to distribute price lists to persons who are touring the establishments of funeral providers for educational purposes.

Illustration #4: A family enters your establishment to discuss the funeral arrangements for a relative. During the conference, the family asks about the selection of various services such as embalming or refrigeration. At the time the subject is raised, you tell the family that a General Price List of the goods and services you offer is located just inside of the front door of your establishment. Are you in compliance with the Rule?

No. The Rule requires that the list be given to consumers. Merely indicating that the price list is available at some location in your establishment is not enough.

Illustration #5: A family enters your establishment to discuss funeral arrangements for a relative. At that time you offer them your General Price List but the family refuses to accept it. Does the Rule require you to take any further steps to force the family to accept the list?

No. The Rule merely requires that you offer it to consumers. If they do not wish to accept it or look at it, you are not required to take any further action.

Illustration #6: You are a funeral provider who makes funeral arrangements for children or infants available at a different price than your regular offerings. Does the Rule prohibit you from setting a different price for children's and infants' funerals?

No. Funeral providers are free to set their prices in any manner desired so long as they comply with the disclosure requirements of the Rule. Thus, funeral providers may establish a different fee for their professional services for children's or infants' funerals. To comply with the Rule in this situation, the funeral provider may simply place a second disclosure for professional services on the General Price List, indicate that the fee applies only to children's and infants' funerals, and describe the services provided for the fee. Funeral providers who are reluctant to itemize the price of a child's or infant's funeral on their General Price List may prepare a separate General Price List for children's and infants' funerals. This separate price list could be given only to those consumers who want to discuss funeral arrangements for a child or an infant. Persons who call your place of business to inquire about your offerings or prices for the funeral of a child or infant should be provided information from your General Price List or a separate General Price List pertaining to such funerals.

In addition, funeral providers may either disclose the prices of the caskets or outer burial containers they offer for children or infants on either the Casket Price List or Outer Burial Container Price List, or they may prepare a separate price list for these items.

Illustration #7: You are a funeral provider who makes funeral arrangements for indigent persons in your community, pursuant to an agreement between you and a government entity. Must you offer a price list to the government when this agreement is arranged?

Yes. The Rule requires funeral providers to comply with the Rule when they discuss funeral arrangements with governmental entities. However, funeral providers are free to set their prices in any manner desired so long as the disclosure requirements of the Rule are met. To comply with the Rule in this situation, funeral providers may simply add their price for funeral arrangements for indigents to their General Price List, or prepare a separate price list for these arrangements. If a separate list is prepared, it is permissible to make it available to only those persons qualifying for the special funeral arrangements.

Illustration #8: Same situation as in illustration #7, above, except that the government agency requests bids on a package basis only. Can you comply with the request and remain in compliance with the Rule?

Yes. Any person, including government agencies, has the option under the Rule of making funeral arrangements on a package basis. If a government agency requests bids or contracts for funerals on a package basis, the funeral provider may comply with the request in compliance with the Rule. The decision on whether the arrangement will be made on an itemized or package basis rests with the government agency and not with the funeral provider.

Illustration #9: You are a funeral provider who makes funeral arrangements for indigent persons in your community, pursuant to an agreement between you and a government entity. The agreement provides that you will provide a basic package funeral for a set fee but that the family may supplement the package by purchasing additional goods or services directly from you. Is the family entitled to a General Price List under these circumstances?

Yes. Under such circumstances, the family must be given the General Price List if they inquire in person about funeral arrangements.

Illustration #10: You are a funeral provider who is approached by a religious group, burial society, or memorial society who wishes to enter into an agreement with you on behalf of their members. Must you give them a General Price List when they inquire in person about funeral arrangements?

Yes. The Rule defines person to include any individual, partnership, corporation, association, government, or governmental subdivision or agency or other entity. Therefore, any group representing their members must be given a General Price List.

Illustration #11: You are a funeral provider who makes funeral arrangements pursuant to an agreement with a government agency or other group or society. This agreement may or may not include different prices from your normal offerings. Must your offerings for these groups, societies, or agencies be placed on the general price list or be made available to persons not qualifying within that recognizable group?

No. Funeral providers may either establish a separate price list for qualifying persons or simply add their price for funeral arrangements to qualifying members of these groups to their general price list. If a separate list is prepared, it is permissible to make it available only to those persons qualifying for the special funeral arrangements.

Illustration #12: Can a funeral provider charge a fee to persons requesting the forms that the Rule requires be given to the consumer or family?

No. Funeral providers are not permitted to charge a fee to persons requesting the forms that the Rule requires to be given to consumers. The staff will closely scrutinize any attempts to place conditions upon the furnishing of information which is required to be disclosed by the Rule.

Illustration #13: You are a funeral provider who does not own limousines. Rather, you arrange to rent limousines from third parties when needed. Must the limousine fee be listed on the General Price List?

No. In these circumstances, the limousine is a cash advance item because it is an item obtained from a third party and paid for by a funeral provider on the purchaser's behalf. Therefore, in the event you do not own a limousine, you do not have to list it on the General Price List. When a family asks you to arrange for limousine service, the Rule requires that you

disclose the price on the statement of goods and services selected.

Illustration #14: You are a funeral provider who upon occasion at the request of a consumer will provide services away from the premises of your funeral home. Although this is not a service you regularly offer, you wish to list it on the General Price List. Can you list this service on the General Price List even though it is not required by the Rule?

Yes. The Rule does not limit the number of offerings that may be included on the General Price List.

Illustration #15: Can a funeral provider include terms of payment for the services, facilities, and goods on the General Price List?

Yes. Funeral providers may add such information to the General Price List.

Illustration #16: You are a funeral provider who receives a call from a family informing you of a death and desiring to make some funeral arrangements over the phone and other arrangements in person at a later time. For example, the family inquires whether your funeral home is available for viewing at a specified time and informs you that they will visit in person to select a casket shortly. Can the funeral provider make the arrangements despite the fact that the family has not received a General Price List?

Yes. The funeral provider can make the arrangements even though the family has not received a General Price List. Under these circumstances, the family has inquired about the "terms, conditions, or prices" of funeral goods and therefore the funeral provider must inform the family that price information is available over the telephone. In addition, the Rule requires the funeral provider to provide specific price information from the price lists, on request, and to answer any other questions with information that is readily available. The funeral provider can then complete the arrangements when the family visits in person. At that time, the General Price List would be offered to the family because they have inquired in person about funeral arrangements.

Illustration #17: You are a funeral provider who is called to a nursing home for removal of a body. When you arrive the family inquires whether your establishment is available at a specified time. Does the Rule require the funeral provider to present the family with a General Price List at that time?

No. The Rule only requires funeral providers to offer the General Price List when people inquire in person about funeral arrangements. However, if the family wants to reserve your facilities and you are willing to make these arrangements at this time, then the family is entitled to receive a General Price List.

Illustration #18: You are a funeral provider in a state where state law prohibits a funeral provider from making a profit on any cash advance item. Under state law, all such items must be listed on the funeral provider's price list as a good or service. Can you place these items on the General Price List?

Yes. These items may be included on the General Price List.

Illustration #19: A family arrives at the funeral home. The discussion concerns the final illness, information for the death certificate and social security benefits. Must the General Price List be given to the family at this point in the discussions?

No. At this point, the discussion has not concerned funeral arrangements or the prices of any funeral goods or services. Therefore, the requirement to offer the General Price List has not been triggered. However, a General Price List must be offered when the discussion concerns funeral arrangements or the prices of any funeral goods or services.

F. Price Disclosures at the Conclusion of the Arrangements Discussion: Section 453.2(b)(5)

This provision of the Rule requires funeral providers to prepare a document which lists the funeral goods and services selected by the consumer. This document must be given to consumers at the conclusion of the arrangement discussion. The list must disclose at least the following information:

(1) The goods and services selected and the price to be paid for each item;

(2) The price of each cash advance item requested; and

(3) The total cost of the goods and services selected.

In addition, the following disclosure must be placed on the statement:

> Charges are only for those items that are used. If we are required by law to use any items, we will explain the reasons in writing below.

To comply with this disclosure, you must identify and disclose in writing any legal, cemetery or crematory requirement which mandates that the consumer purchase a specific funeral good or service.

Illustration #1: You are a funeral provider who already includes the information required by the Statement of Funeral Goods and Services Selected on a document that you regularly provide to consumers at the conclusion of the arrangements conference. Does the Rule require you to prepare another document to comply with this provision?

No. Funeral providers who already provide the disclosures required by the Rule on any other statement, contract or other document given to consumers at the conclusion of the arrangements conference need not prepare a second document to comply with the Rule. However, the statement given to consumers at the time must include the required disclosure regarding legal requirements, above, and funeral providers are required to explain any such requirement on the statement.

Illustration #2: Does the statement required by the Rule mean that consumers are to pay in advance?

No. The Rule does not require that consumers pay in advance. It simply means that funeral providers and consumers are to agree on the type of funeral and the costs, in advance of beginning the arrangements.

Illustration #3: You are a funeral provider who purchases cash advance items on behalf of consumers who arrange funerals through your establishment. At the time of the arrangements conference you often do not know the exact price of the cash advance items. Do you have to disclose the exact price of cash advance items on the statement?

No. The prices of cash advance items need only be given to the extent known or reasonably ascertainable at the time of the arrangements conference. If the prices are not known or are not reasonably ascertainable, a good faith estimate shall be given and a written statement of the actual charges shall be provided before the final bill is paid.

Illustration #4: Is it permissible to simply lump all of the cash advance items into one general disclosure marked "Cash Advances" with one price?

No. Each cash advance item must be separately itemized. Thus, the Statement of Funeral Goods and Services Selected must have a separate itemized price for each type of cash advance item requested by the consumer.

Illustration #5: You are a funeral provider who wants to use the Statement of Funeral Goods and Services Selected as the final bill. Are there any other disclosures required by the Rule which must appear on the final bill?

Yes. If you use the Statement of Funeral Goods and Services Selected as a final bill, the following disclosures must be added:

> If you selected a funeral which requires embalming, such as a funeral with a viewing, you may have to pay for embalming.

You do not have to pay for embalming you did not approve if you selected arrangements such as a direct cremation or immediate burial.

If we charged for embalming, we will explain why below.

In accordance with this disclosure, you should explain, in writing, the reason why a fee for embalming has been included on the final bill, if the consumer has been charged for embalming.

Illustration #6: You are a funeral provider who offers package funerals in addition to itemized funerals. A consumer arranges for you to provide a package funeral. Do you still need to prepare a Statement of Funeral Goods and Services Selected?

Yes. If a consumer selects a package funeral, the funeral provider must still prepare a Statement of Funeral Goods and Services Selected. The statement, in such an instance, would simply list the package chosen (with the goods and services comprising the package), the price of any cash advance items requested by the consumer but not included in the package, and the total price of the arrangements requested.

G. Other Pricing Information: Section 453.2(b)(6)

This provision of the Rule allows funeral providers to offer any other pricing information formats to persons arranging funerals, so long as the funeral provider complies with the Rule requirements for price lists and Statement of Funeral Goods and Services Selected. While the Rule must be followed, funeral providers can provide additional information if desired.

Illustration #1: Can a funeral provider offer package pricing?

Yes. Funeral providers may offer package funerals so long as consumers are given the option of making funeral arrangements on an itemized basis. Thus, funeral providers can, in addition to offering funerals on an itemized basis, also provide package prices for various types of funerals, if desired. This option of including package prices does not allow you to disregard the itemized prices and disclosures required by the Rule. Beyond this, however, you may put the package and itemized prices in any order. In addition, the general itemization provisions of the Rule do not require funeral providers to itemize prices within any packages offered. In addition, the Rule does not require that the total price of any package offered be equal to the total cost of the same components offered on an itemized basis on the General Price List.

IV. What Representations are Prohibited? Section 453.3

The requirements of this section fall into two basic categories. The first set of provisions state that you cannot make any misrepresentations to consumers in six specific areas which are described below. The second category of provisions requires you to affirmatively disclose certain information to consumers *in writing*. The Rule also specifies where to put these disclosures. The Rule also requires that the disclosures be clear and conspicuous.

A. Representations Concerning Embalming: Section 453.3(a)

This provision prohibits you from telling consumers that state or local law requires you to embalm the remains whenever that is not true. Consequently, you may not tell a consumer that you are required to embalm under any of the following circumstances, *unless state or local law requires it:*

(1) When the consumer wishes to have a *direct cremation;*

(2) When the consumer wishes to have an *immediate burial;*

(3) When the remains are placed in a *sealed casket;*

(4) If refrigeration is available *and* there is to be a funeral with no viewing or visitation *and* there is to be a closed casket.

This provision also requires you to inform consumers in writing that, except in certain special cases, the law does not require embalming. You must place a disclosure to this effect on your General Price List, *next to the price for embalming.* The precise disclosure that you must make is as follows:

Except in certain special cases, embalming is not required by law. Embalming may be necessary, however, if you select certain funeral arrangements, such as a funeral with viewing. If you do not want embalming, you usually have the right to choose an arrangement which does not require you to pay for it, such as direct cremation or immediate burial.

Illustration #1: A family wants you to arrange for a funeral involving an immediate burial, with no viewing. Can you tell the family that embalming is required?

No. Unless there is some state or local law that requires it, you may not make any representation to this family that embalming is required. The Rule also requires you to place the specified written disclosure on your General Price List that embalming is not usually required by law. The precise language of this disclosure appears above.

Illustration #2: Your establishment has refrigeration facilities available. The law in your jurisdiction states that if there is no burial or cremation within two days of the date of death, the remains must be either embalmed or refrigerated. A family comes to your funeral home and wants you to plan a funeral for them. There is to be no viewing, but the burial will not take place until three days after the person died. Can you tell the family that embalming is required?

Yes, but only if you told them that refrigeration is an option. However, if the state law referred to embalming only, and did not list refrigeration as an option, the Rule would not be violated if you told the family that embalming was required by law. Your price list must also make the specified written disclosures regarding embalming.

Illustration #3: A family comes to your funeral home and wants you to plan a funeral for them. The family requests that there be no viewing, that the remains be placed in a sealed casket, and requests two days of visitation. Under the particular circumstances, the law does not require that the body be embalmed. Can you represent to the family that embalming is required?

No. Under these circumstances, you must not represent to the family that embalming is required because the remains have been placed in a sealed casket. Also, you must place the specified written disclosure regarding embalming on your price list.

Illustration #4: Your state law provides that whenever a person has died of certain highly contagious diseases, such as diphtheria, smallpox or malaria, the remains must be embalmed. A family comes to your establishment to arrange a funeral service for someone who died of smallpox. Can you represent to the family that embalming is required?

Yes. In this situation, you may inform the family that because of the precise circumstances, embalming is required by law. However, you must still include the disclosure on your price list that embalming is not *usually* required by law. (*Also* you must put a disclosure on your Statement of Funeral Goods and Services Selected that briefly describes the state law requirement. This provision is discussed earlier in Part IV F.)

Illustration #5: A family enters your establishment and wants to arrange for a funeral with a formal viewing. The funeral is to occur two days after the death has occurred on a hot summer day. In your jurisdiction, there is no law or regulation that requires embalming. You do not have refrigeration facilities

and the family does not want a sealed casket. Can you tell the family that embalming is required?

Yes. In this situation, even though there is no *legal* requirement that the body be embalmed, the Rule allows you to tell the family that embalming is a *practical* necessity to delay decomposition of the remains and to preserve them for viewing. However, you may *not* tell the family that the law requires embalming since that is not the case. In addition, you must include the written disclosure on your General Price List that embalming is not usually required by law.

Illustration #6: A family enters your establishment and wants to arrange an immediate burial with no viewing. However, before burial, a family member wants to look at the body by lifting the lid of the unsealed casket. In your jurisdiction, there is no law or regulation that requires embalming. Can you tell the family that embalming is required?

No. You may not tell the family that the law requires embalming since that is not true. In addition, the fact that a family member wants to look at the remains does not constitute a formal viewing which would enable you to tell the family that embalming is required. Finally, you must include the written disclosure on your General Price List regarding embalming.

Illustration #7: Can a funeral provider choose to orally inform consumers that embalming is not generally required by law and that depending on the funeral chosen, they may not need to have embalming performed rather than placing a written disclosure on the Price List?

No. The Rule requires funeral providers to make the disclosures in writing on the Price List. However, funeral providers may in addition to making the written disclosures inform consumers orally that embalming is not generally required by law.

Cross-Reference: This provision operates in tandem with a related provision that sets forth the guidelines that govern when you may embalm the remains for a fee. We discuss that provision below. (See Part VI.)

B. Representations Concerning Caskets for Cremations: Section 453.3(b)

This provision prohibits you from telling consumers that state or local law requires them to purchase a casket when they wish to arrange for a direct cremation. The Rule defines a "direct cremation" as one that occurs without any formal viewing of the remains or any visitation or ceremony with the body present.

This provision also states that you may not tell a consumer that a casket is required for a direct cremation unless you make clear that you are only referring to an unfinished wood box. The Rule defines "unfinished wood box" as an unornamented casket which is made of wood and which does not have a fixed interior lining.

If you arrange direct cremations for your clients you must disclose certain information to them. You must make the disclosure in writing, and it must appear on your General Price List next to the place where you list the price range for direct cremations. The disclosure is as follows:

> If you want to arrange a direct cremation, you can use an unfinished wood box or an alternative container. Alternative containers can be made of materials like heavy cardboard or composition materials (with or without an outside covering), or pouches of canvas.

Illustration #1: A family enters your establishment and wants to arrange for a funeral involving a direct cremation. This is one of the services that your establishment provides. Can you represent that a casket is required by law?

No. You may not make any representation to the family that either state or local law requires them to purchase a casket. In addition, you may not inform the family that they are required to buy any sort of casket, other than an unfinished wood box, for a direct cremation. Finally, you must place a written disclosure on your General Price List that either unfinished wood boxes or alternative containers are available for direct cremations. The precise language of this disclosure appears above.

Illustration #2: A family wants to arrange for a funeral involving a direct cremation. This is not a service that your establishment provides. Can you tell them that the law requires them to buy a casket in such a circumstance?

No. You may *not* make any statement that caskets are required for direct cremations. However, in this instance, you are required to make any written disclosures about the availability of alternative containers since the Rule requires you to do so only when you offer direct cremations.

Illustration #3: You are a funeral provider who offers both direct cremation and immediate burial. A family requests that you arrange for an immediate burial. Must you tell the family that they have the option of buying an alternative container or unfinished wooden box?

No. In this instance, you are not required to inform the family that they can use an unfinished wood box or an alternative container. Although the General Price List must include the disclosure regarding use of an alternative container or unfinished wood box for direct cremation, the Rule does not require you to make these goods available for sale for immediate burial.

Illustration #4: You are a funeral provider who offers direct cremation and cremation following a service with a viewing. A family enters your establishment and asks you to arrange a funeral involving cremation. However, they also want a service with viewing of the remains and the cremation afterwards. Do have to tell the family that alternative containers or unfinished wooden boxes are available?

Yes. If your establishment offers direct cremations, the Rule requires you to offer a General Price List containing the disclosure informing consumers that an unfinished wood box or alternative container is available for direct cremation. No oral disclosures are required by the Rule. However, you have the option to orally explain to the family that those items apply for *direct* cremations and that you do not provide them for cremations that occur after a viewing. The Rule does not prevent you from selling a casket in this situation.

Illustration #5: You are a funeral provider who offers direct cremation. However, none of the crematories in your area accept pouches. Can you modify the disclosure required by the Rule to delete the reference to "pouches of canvas"?

No. You are required to include the disclosure verbatim. However, you may add information to the disclosure. For example, funeral providers may inform consumers in writing that local crematory requirements prohibit use of non-rigid containers.

Cross Reference:

This provision operates in tandem with a related provision that sets forth the guidelines governing the sale of receptacles for remains that are to be cremated. We discuss that provision below. (See Part V.)

C. Representations Concerning Outer Burial Containers: Section 453.3(c)

This provision states that you may not tell consumers that state or local laws or regulations require the purchase of an outer burial container if that is not true; or that a particular cemetery requires an outer burial container, if that is not true.

The provision also requires you to inform consumers that state law does not require them to purchase an outer burial container. This information must appear on your General Price List next to the prices for outer burial containers or on the separate price list for outer burial containers if you use one. The precise language is as follows:

> In most areas of the country, no state or local law makes you buy a container to surround the casket in the grave. However, many cemeteries ask that you have such a container so that the grave will not sink in. Either a burial vault or a grave liner will satisfy these requirements.

In essence, therefore, the Rule states that you must make it clear to consumers that the *law* does not require an outer burial container. However, if the *cemetery* imposes such a requirement, you may explain this fact to the family. The written disclosure informs consumers that grave liners are suitable for meeting the cemetery requirement. The Rule does not require you to have extensive legal knowledge. However, if you tell the family that the law requires an outer burial container, you must be prepared to verify that statement. You also need not be aware of the requirements of every cemetery. However, as before, if you make any statement that a cemetery requires an outer burial container, that statement must be accurate.

Illustration #1: A family wants you to arrange a funeral involving a ground burial. No state or local laws or regulations require the purchase of an outer burial container. Moreover, there is no cemetery requirement that an outer burial container be used. Can you represent that an outer burial container is required?

No. In this instance, you may not tell the family that an outer burial container is required by any state or local law or regulation, or by the cemetery in question. In addition, you must place the specified disclosure regarding outer burial containers on your price list. The precise language of this disclosure appears above.

Illustration #2: A family wishes to arrange a funeral with a ground burial. No state or local law or regulation requires outer burial containers. However, the cemetery that the family has chosen requires that the casket be placed in a rigid outer container. Can you represent that an outer burial container is required?

Yes. In this instance, you may tell the family that the cemetery requires the outer burial container. You may not, however, make any statement that the law requires the purchase of an outer burial container since that is not true in this particular case. You must also place the written disclosure on your price list.

Illustration #3: Can you add the specific cemetery requirements for outer burial containers to this price list?

Yes. The Rule does not prohibit funeral providers from adding accurate additional information to the price lists. For example, funeral providers may inform consumers in writing about the requirements imposed by local cemeteries, if any, for outer burial containers.

D. Representations Concerning Legal and Cemetery Requirements: Section 453.3(d)

This provision states that you may not tell consumers that federal, state or local law requires them to buy a particular funeral good or funeral service if that is not true. You also may not tell consumers that a particular crematory or cemetery requires them to buy a particular good or service if in fact there are no such requirements.

If you tell a consumer that he or she must purchase a particular funeral good or funeral service because of any legal, cemetery or crematory requirement, you must do the following:

—Identify the particular requirement in writing on the Statement of Funeral Goods and Services Selected; and
—Briefly describe the requirement in writing on that same document.

The Rule requires you to make this written disclosure *whenever* you tell a family that they must purchase a good or service because of a legal, cemetery or crematory requirement.

Illustration #1: The law in your state requires that if you are going to ship the remains into another state, you must place those remains in a sealed casket. A family asks you to arrange a funeral and requests that you ship the remains to another state for burial. Can you inform them that they must buy a sealed casket under these circumstances?

Yes. In this instance, the law requires you to use a sealed casket. Because of these legal requirements, you may inform the family that there are certain purchases that they must make. You must also disclose the laws that require the purchase of these items on the Statement of Funeral Goods and Services Selected. This means that you should generally indicate that state law requires this purchase and also provide a brief description of the requirement. For example, if you write "state law requires a sealed casket when remains are transported into another state", you would comply with the Rule.

Illustration #2: A family enters your establishment and asks you to arrange a burial in a local cemetery. The cemetery does not require any particular funeral goods for burial. Can you inform the family that the cemetery requires them to buy a specific type of sealed casket under those circumstances?

No. You may not tell a consumer that a particular good or service is required if in fact there are no such requirements.

E. Representations Concerning Preservative and Protective Value Claims: Section 453.3(e)

This provision states that you may not tell consumers that any funeral goods or funeral services will delay the natural decomposition of the deceased for a long-term or indefinite time. You also may not state the funeral goods will protect the deceased from gravesite substances when that is not the case.

While the Rule flatly prohibits the representation that any funeral goods or services will delay the decomposition of the deceased for a long-term or indefinite time, the Commission recognizes that it is possible that some funeral goods or services may delay decomposition for a short period of time. However, a funeral provider cannot say that any goods or services will delay natural decomposition after burial when such is not the case.

Illustration #1: A family asks you to arrange a funeral with a full service and a viewing of the remains. After the service, there is to be a ground burial. Can you tell the family that embalming will temporarily preserve the body to make it suitable for viewing?

Yes. In this situation, you may, if you want, explain to the family that embalming will temporarily preserve the body to make it suitable for viewing. However, you may not make any statement to them that embalming has any preservative effect other than a temporary one.

Illustration #2: Same situation as above, except that the family now wants to discuss the purchase of a casket or outer burial container. Can you tell the family that these goods will delay the natural decomposition of the deceased for a long-term or indefinite time?

No. In explaining the properties of either of these items you may not tell the family that they can delay the natural decomposition of the remains for a long-term or indefinite period of time. You also may not state that either the casket or the vault will protect the body from air, dirt, water or other gravesite substances when that is not true.

Illustration #3: Same situation as above. The manufacturer of the casket or burial vault states in the warranty that it will preserve the body for a

period longer than five years. Must you make the warranty available to the family?

Yes. Existing federal law requires you to make all warranty information available to the consumer. This means that you must allow the family to read any of the manufacturer's warranties. However, you must disclose the warranty information, without adopting as your own any statement that you know to be a violation of the Rule. You may, if you wish, inform the family that while the manufacturer has made certain statements about the product that you are required to disclose, you do not have personal knowledge of the preservative value of the merchandise that enables you to state that it has a preservative effect after burial.

F. Representations Concerning Cash Advances: Section 453.3(f)

This provision states that you may not tell consumers that the price that you charge them for a cash advance item is the same price that you paid for it, when such is not the case. A cash advance item is any item which you describe to purchasers as a cash advance, accommodation, cash disbursement, or any similar terms.

The section also provides that if there is a markup on a cash advance item, you must disclose that fact to consumers in writing. To do so, you must place the following sentence on your General Price List at the end of the cash advance disclosure that is required by a previous section (§ 453.2(b)(4)(i)(D)):

"We charge you for our service in buying these items."

You must make this written disclosure whenever you charge for obtaining cash advance items or receive and retain a rebate, commission or trade or volume discount on them. The Rule does *not* prevent you from adding a service charge nor does it require you to disclose the amount of that charge. Moreover, there is no restriction on how much you may charge. The Rule merely states that if you add a service charge to the cost of a cash advance item, you must disclose this fact to the consumer on your General Price List.

Illustration #1: A family asks you to arrange a funeral and asks for flowers as part of the service. You obtain the flowers from the florist, pay $50.00 for them, and charge the family $75.00. Can you tell the family that the amount you are charging them is the same amount that you paid for the flowers?

No. You may not represent to the family in any way that the cost to you for obtaining the flowers is the same as the amount that you are charging them. In addition, when you bill the family for $75.00, you must disclose that you are adding a service charge to the cost of the flowers. The precise language of this disclosure appears in the earlier discussion of the cash advance provision.

Illustration #2: Same situation as in Illustration #1, above, except that, instead of adding a service charge to the cost of the flowers, you charge the same amount that you paid for them but receive a trade or volume discount at the end of the year. Can you tell the family that the amount you are charging them for the flowers is the same amount that you paid?

No. You may not represent to the family in any way that the cost to you for obtaining the flowers is the same as the amount you are charging them. There is no requirement that you disclose the *amount* of that discount or rebate to the consumer. However, you must inform the consumer of the fact that you receive such a discount. You do this in the same manner as above, by making a disclosure in writing on your General Price List.

V. Can the Sale of Any Funeral Goods or Funeral Services Be Conditioned Upon the Purchase of Any Other Funeral Goods or Services? Section 453.4

This section prohibits funeral providers from requiring consumers to purchase unwanted and unneeded goods and services as a condition of obtaining those goods and services which consumers do want. It provides that consumers be informed of the option to select only those goods or services they want with certain exceptions. The section also indicates situations when certain goods or services may be required by the provider.

A. Casket for Cremation Provisions: Section 453.4(a)

This provision prohibits funeral providers from requiring consumers to purchase a casket, other than an unfinished wood box, for direct cremation. Thus, funeral providers who arrange direct cremations for consumers need to offer consumers something other than a casket, such as an unfinished wood box or alternative container. A direct cremation is a disposition of human remains by cremation, without formal viewing, visitation, or ceremony with the body present. An unfinished wood box is an unornamented casket made of wood which does not have a fixed interior lining. An alternative container is a non-metal receptacle or enclosure, without ornamentation or a fixed interior lining, which is designed for the encasement of human remains and which is made of cardboard, pressed-wood, composition materials (with or without an outside covering) or pouches of canvas or other materials.

Illustration #1: A consumer enters your establishment and wants you to arrange a direct cremation for a deceased relative. For direct cremation you offer, in addition to your regular casket selection, unfinished wood boxes. May the consumer demand that you sell alternative containers when all you offer are unfinished wood boxes?

No. The Rule requires you to make either an unfinished wood box or an alternative container available if you offer direct cremations. The funeral provider can choose to offer either alternative containers or unfinished wood boxes or offer both of them. If you offer unfinished wood boxes for direct cremations you need not offer alternative containers. Similarly, if you offer alternative containers, you need not offer unfinished wood boxes. The choice of offering either an alternative container or unfinished wood box is wholly within the business judgment of the funeral provider.

Illustration #2: A consumer wants to purchase a direct cremation from a provider who does not offer direct cremations. Must the provider offer the service to comply with the Rule?

No. The Rule does not require providers to offer direct cremations. However, once the provider decides to offer direct cremations, the Rule requirements are applicable.

Illustration #3: You are a funeral provider who offers direct cremations. Do you need to stock unfinished wood boxes or alternative containers in inventory to comply with the Rule?

No. The Rule does not require funeral providers to maintain an inventory of unfinished wood boxes or alternative containers. All that is needed is for you to be able to secure such a container, on request, and make it available for use in a direct cremation. If you can obtain the container from a supplier when needed, you will be in compliance with the Rule.

Illustration #4: A consumer enters your establishment and wants to arrange an immediate burial for a deceased relative. You are a funeral provider who also offers direct cremations and who has alternative containers in inventory. May the consumer insist that you sell an alternative container or an unfinished wood box for the immediate burial?

No. The Rule requires the funeral provider to offer unfinished wood boxes or alternative containers for direct cremations only. It does not require

funeral providers to sell unfinished wood boxes or alternative containers to consumers who wish to arrange immediate burials.

B. Other Required Purchase of Funeral Goods or Funeral Services: Section 453.4(b)

This provision prohibits a funeral provider from requiring consumers to buy unwanted goods and services in order to buy other requested goods and services. In addition, the following disclosure must appear on the General Price List before the list of your prices:

[T]he goods and services shown below are those we can provide to our customers. You may choose only the items you desire. If legal or other requirements mean you must buy any items you did not specifically ask for, we will explain the reason in writing on the statement we provide describing the funeral goods and services you selected.

There are three exceptions to the general right to select goods and services. First, the funeral provider has the right to make the charges for the professional services of funeral director and staff non-declinable. If you choose to make your services non-declinable the following disclosure must be added to the above statement, between the second and the third sentence: "[h]owever, any funeral arrangements you select will include a charge for our services". The second exception allows the funeral provider to require consumers to purchase goods or services which are required by law. The third exception allows a funeral provider to refuse a combination of goods or services which would be impossible, impractical, or excessively burdensome to provide. This provision is designed to protect the funeral provider from unreasonable consumer requests. It does not allow the funeral provider to refuse a request simply because the funeral provider does not like it. The request must be impossible, impractical or excessively burdensome to provide in order for the funeral provider to refuse to provide it.

Illustration #1: You are a funeral provider who itemizes the goods and services you offer in compliance with the Rule, but who also offers a range of predetermined package plans. Does this violate the Rule?

No. As long as the consumer may exercise his or her right to choose only the goods and services wanted and as long as the funeral provider complies with the price list requirements of the Rule, funeral providers are not prohibited from, in addition, offering predetermined packages for sale. Thus, you may, in addition to offering funerals on an itemized basis, continue to offer package funerals for sale. Consumers may continue to select these packages if they desire to do so. The Rule simply prohibits the imposition of packages on consumers by funeral providers.

Illustration #2: The funeral provider has elected to add the service charge to the cost of the casket and to make the service charge non-declinable. The consumer lawfully decline to purchase a casket. May the funeral provider charge separately for the service charge?

Yes. Because the funeral provider has made the service charge non-declinable the consumer cannot avoid paying the charge. Therefore, the funeral provider can charge the consumer a fee for the professional services of the funeral director and staff. Under these circumstances, the funeral provider should include a listing for the service charge on the general price list if the consumer provides a casket. The list should indicate that this charge in non-declinable.

Illustration #3: The funeral provider has made the service charge non-declinable. Included in the services are embalming, dressing, cosmetology, restoration, along with consultations, preparation and obituary notices. Can all of these services be declared non-declinable?

No. The Rule does not allow funeral providers to include in the service charge those items which the Rule specifically requires you to list separately on the General Price List. Consequently, embalming, cosmetology and other preparation of the body may *not* be included. Thus, the fee for professional services may not include a charge for the following items: Forwarding of remains to another funeral home, receiving remains from another funeral home, direct cremation, immediate burial, transfer of remains to funeral home, embalming, other preparation of the body, use of facilities for viewing, use of facilities for funeral ceremony, other use of facilities, hearse, limousine, other automotive equipment, or acknowledgment cards. Among the services which may include in the list of services of funeral director and staff are: arranging and supervising a funeral, conducting the arrangements conference, planning the funeral, obtaining necessary permits and placing obituary notices. Of course, this list is not exhaustive.

Illustration #4: You are a funeral provider who has not included the disclosure on the General Price List informing the consumer that the fee for the professional services of the funeral director and staff in non-declinable. May the consumer decline to purchase that service?

Yes. Unless the consumner requests the service, the consumer may decline to pay the fee, if the funeral provider has not taken the steps outlined in the Rule to make the charge non-declinable.

Illustration #5: The state requires all victims of tuberculosis to be embalmed. May the funeral provider require consumers to purchase embalming for victims of tuberculosis?

Yes. this requirement is imposed by law and thus it is an exception to the general right of consumers to select only those goods and services wanted.

Illustration #6: The consumer selects an arrangement which includes viewing for four days, but the consumer does not want to purchase embalming and no other preservative measures such as refrigeration are available. May the funeral provider require the consumer to purchase embalming?

Yes. The Rule allows a funeral provider to condition the furnishing of funeral goods and services on the purchase of embalming when embalming is a practical necessity. Usually, a funeral with viewing makes embalming a practical necessity if no refrigeration is available.

Illustration #7: A consumer wants to use a viewing room for two hours but does not want to purchase any other services from the funeral provider. May the consumer insist on such a contract?

No. The Rule allows the funeral provider to refuse to offer a combination of goods and services which would be impossible, impractical or excessively burdensome to provide. As a result, the provider may refuse to render the service.

Illustration #8: During a hot summer month, a family requests a funeral to take place 5 days after death. They do not want embalming or a sealed casket and you have no refrigeration facilities. Can you refuse to comply with their wishes unless they purchase a sealed casket or embalming?

Yes. This situation falls into the exception that allows you to refuse requests which are impractical, impossible or unduly burdensome. This type of request could be considered either impractical or burdensome and you can refuse to comply with the request.

Illustration #9: Same situation as in Illustration #8 except that the funeral will take place the next day and there is to be no visitation or viewing. The laws in your state do not require embalming unless the body is not buried for 48 hours or more. You strongly believe, however, that embalming is appropriate for all bodies. Can you require the consumer to purchase embalming?

No. The Rule will not allow you to require consumers to pay for embalming in this instance. There is no reason, from the facts stated, why the arrangements requested would be impractical, impossible, or unduly burdensome to provide. The fact that you believe that embalming is appropriate for all bodies does not mean that you can require the family to purchase embalming.

Illustration #10: You are a funeral provider who receives a request for a service that you do not offer. Must you comply with the request?

No. The Rule does not require you to provide a good or service you do not offer. Therefore, you are not required to comply with the request, although you can if you so desire.

Illustration #11: A family enters your establishment and asks you to arrange a direct cremation. They inform you that they wish to provide their own container. Can you insist that they purchase a container from you?

No. You cannot insist that they purchase a container from you if the family supplies one of their own that satisfies crematory requirements. Moreover, you cannot charge them for a container.

Illustration #12: Can a funeral provider have a fee for use or basic facilities which is non-declinable?

No. Only the professional services of funeral director and staff and items required under state law can be non-declinable charges. However, a funeral provider can recover his or her overhead costs for items such as mortgage or rent, utilities and taxes. For example, funeral directors may allocate a portion of their overhead charges to each item offered or may include these charges in their fee for professional services.

Illustration #13: Can a funeral provider require that a consumer who declines embalming pay for other preparation of the body when the family does not wish to have a public viewing but wishes to see the body prior to disposition?

No. Consumers who do not wish to have a public viewing but who wish to see the body prior to disposition cannot be required to purchase other preparation of the body if they decline embalming. Rather, funeral providers are required to list other preparation as a separate item which may be selected by a consumer, if desired.

Illustration #14: You are a funeral provider who operates a funeral home and crematory. The crematory serves not only the needs of your funeral home but also other funeral providers. Can you have a requirement that consumers use an unfinished wood box if they wish to use the services of your crematory?

Yes. The Rule does not prohibit funeral providers or crematories from requiring that consumers use unfinished wood boxes for direct cremation. However, you cannot require that consumers purchase the unfinished wood box from you in order to purchase the other goods or services you offer.

VI. Can a Fee Be Charged for Services Provided Without Prior Approval? Section 453.5

This provision prohibits you from charging a fee to embalm unless:

(1) State or local law requires embalming; or

(2) The family gives you express permission to embalm prior to embalming; or

(3) You meet the following requirements if there are *exigent circumstances:*

(a) You are unable to contact a family member or other authorized person after exercising due diligence; *and*

(b) You have no reason to believe that the family does not want embalming; *and*

(c) After embalming the body, you contact the family telling them that if they choose a funeral which does not require embalming no fee will be charged, but that a fee will be charged if they select a funeral requiring embalming, and they then approve the embalming, either expressly or impliedly.

The Rule also requires you to place a written disclosure on the final bill or agreement given to customers informing them of their right not to pay for embalming performed without prior approval unless they select a type of funeral which would require embalming. Moreover, the disclosure must state that if a fee is charged for embalming, a written explanation will appear on the final bill or agreement given to the customer.

The exact language of the disclosure is:

> If you selected a funeral which requires embalming, such as a funeral with viewing, you may have to pay for embalming. You do not have to pay for embalming you did not approve if you selected arrangements such as a direct cremation or immediate burial. If we charged for embalming, we will explain why below.

Illustration #1: A family enters your establishment and wants to arrange for a funeral service for someone for whom the cause of death was smallpox. The law in your state provides that whenever the deceased has died of certain highly contagious diseases, such as diphtheria, malaria, or smallpox, the remains must be embalmed. Can you charge a fee for embalming?

Yes. The Rule clearly provides that a fee for embalming may be charged if state or local law requires embalming. In addition, you must explain to the consumer on the final bill or agreement that a charge was made for embalming because of the state law requirement.

Illustration #2: You get a telephone call requesting that you pick up a body and transfer it to your establishment. As soon as the body arrives, you embalm it even though there was no legal requirement to do so. Can you charge a fee for embalming?

No. You may not charge a fee for this service because you did not attempt to obtain the family's permission prior to embalming the body. In addition, state law did not require embalming.

Illustration #3: You get a telephone call requesting that you pick up a body at the deceased's home and transfer it to your establishment. While at the family's home you tell them that "we will proceed immediately with arrangements for the funeral." When the body arrives at the funeral home, you embalm it. There is no state law requiring embalming. Can a fee for embalming be charged to the family in such a circumstance?

No. The family has not given you express permission to embalm prior to embalming in this situation. The same result would be reached if you told the family that you were "taking the body to the funeral home and proceeding with its preparation". In order to charge a fee for embalming when you are able to contact a family prior to embalming you must obtain express permission to do so. The Rule is flexible so that the exact language to be used is up to you. However, the permission must be express; indirect or implied permission is not sufficient. Additionally, because you were able to contact the family prior to embalming, the provisions permitting you to embalm under exigent circumstances are inapplicable.

Illustration #4: A family enters your establishment and wants to arrange for a funeral for their relative. During the arrangements conference, you ask for and receive their consent to embalm the body. Can you charge a fee for embalming?

Yes. The family has given you express permission to embalm prior to embalming. On the final bill or agreement given to the family, you must explain that a fee for embalming was charged because the family approved the service.

Illustration #5: You receive a phone call requesting that you pick up a body and transfer it to your establishment. When the body arrives, you attempt to

contact a family member to make arrangements for disposition but are unable to do so. After exhausting all means known to you and failing to contact the family, you embalm the body. Thereafter, the family comes in to discuss arrangements. During the conference, you explain that if they select a funeral which does not require embalming, such as a direct burial or indirect cremation, no fee will be charged for embalming. You also inform them that a fee will be charged, however, if they select a funeral requiring embalming. The family then decides to select a traditional funeral with three days of viewing. Can you charge a fee for embalming?

Yes. Although you were unable to obtain prior permission to embalm the body, you were able to comply with the exigent circumstances exception to the Rule, enabling you to charge a fee for embalming under these circumstances. On the final bill you give to the family, you must explain that a fee is included for embalming because they chose a funeral which required embalming.

Illustration #6: Same facts as No. 5 above, but after you explain to the family that if they select a funeral which does not require embalming no fee will be charged for embalming, the family selects a direct cremation. Can you charge a fee for embalming?

No. You may not charge a fee for embalming because the family did not approve the embalming. This is true even though you already provided the service of embalming. By selecting a direct cremation, the family has impliedly informed you that they do not wish to pay for embalming. Because the Rule prohibits you from charging consumers for services which are not approved, you may not charge a fee for embalming.

Illustration #7: You are a funeral provider who seeks to obtain permission to embalm by telephone. When you contact the family, they ask you whether embalming is necessary. Does the Rule require you to inform the family or other authorized person that price information is available over the telephone?

Yes. The Rule requires funeral providers to inform consumers that price information is available by telephone when discussing the "terms, conditions, or prices" of funeral goods or services. When a funeral provider discusses whether embalming is necessary, they are discussing a "term, condition, or price" of a funeral service and must inform the person that price information is available. Unless the consumer asks about the price of embalming, the Rule does not require you to disclose the price. However, if the consumer asks about the price, then they are entitled to that information.

Illustration #8: You are a funeral provider who is removing a body from the place of death. At that time, you ask the family for permission to embalm the body. Does the Rule require you to offer a General Price List to the family at that time?

Yes. The Rule requires funeral providers to offer the general price list to consumers who inquire in person about "funeral arrangements". The requirement to comply with the Rule is not limited to arrangements made within the funeral home. If you offer to sell funeral goods or services outside of the funeral home, you must be prepared to comply with the Rule. In requesting permission to embalm, you are offering to sell a funeral service. Thus, a price list would need to be offered to the family.

Illustration #9: A person makes pre-need funeral arrangements in which the contract specifies that embalming is included. Must the family give permission to embalm at the time of death?

No. When a person, prior to death, pre-arranges a funeral including embalming, the funeral provider need not obtain permission from a family member or other authorized person at the time of death. This preauthorization is sufficient for the Commission's Rule. Its validity under state laws requiring authorization for embalming would, of course, be determined under those laws.

VII. Disclosures To Be Clear and Conspicuous: Section 453.7

The Commission has included a requirement in the Rule that the disclosures which funeral providers must furnish to consumers are to be made in a manner which is clear and conspicuous. The goal is to ensure that the information provided under the Rule will be presented in a manner readily discernible by consumers. Although no minimum type size is mandated, the disclosures must be legible, whether typewritten, handwritten, or printed. The standard simply requires that disclosures be made in a reasonably understandable form.

VIII. What Are the State Exemption Provisions of the Rule? Section 453.9

The Rule provides that it will not be in effect in a state to the extent specified by the Commission where:

(1) Application for an exemption is made by a state;

(2) There is a state requirement in effect which applies to any transaction to which the Rule applies; and

(3) The state requirement provides an overall level of protection which is as great as, or greater than, the protection afforded by the Rule.

If an exemption is granted, it shall be in effect only for so long as the state administers and enforces effectively the state requirement. During the exemption proceeding, the FTC Rule will remain in effect.

The Commission's staff has issued guidelines regarding procedures for exemption proceedings (49 FR 9743 (March 15, 1984)). Final guidelines and an Analysis of Public Comment were issued and published (50 FR 12521 (March 29, 1985)). The guidelines became effective on March 29, 1985.

Illustration #1: You are a funeral provider in a state which has a state requirement in effect which applies to the same transactions to which the Rule applies. The state requirement provides an overall level of protection which is as great as, or greater than the protection afforded by the Rule. Can you file a state exemption petition?

No. The Rule provides that applications for exemption be made by state governmental agencies. Therefore, funeral providers or trade associations may not file for statewide exemption.

List of Subjects in 16 CFR Part 453

Funerals, Trade practices.

By direction of the Commission.

Emily H. Rock,

Secretary.

Alternative 1

ANY NAME FUNERAL HOME

100 Main Street

Yourtown, USA

(123) 456–7891

GENERAL PRICE LIST

(These Prices are Effective as of Month, Day, Year)

The goods and services shown below are those we can provide to our customers. *You may choose only those items you desire.* [However, any funeral arrangements you select will include a charge for our services.]* If legal or other requirements mean you must buy any items you did not specifically ask for, we will explain the reason in writing on the statement we provide describing the funeral goods and services you selected.

* If a consumer may not decline a charge for the services of funeral director and staff this sentence must be included here. Please see the compliance guides for a further explanation.

This list does not include prices for certain items that you may ask us to buy for you, such as cemetery or crematory services, flowers, and newspaper notices. The prices for those items will be shown on your bill or the statement describing the funeral goods and services you selected. [We charge you for our services in buying these items.]**

FORWARDING OF REMAINS TO ANOTHER FUNERAL HOME: $———

This charge includes:
- removal of remains
- services of staff
- necessary authorizations
- embalming
- local transportation (but not shipping charges)

RECEIVING OF REMAINS FROM ANOTHER FUNERAL HOME: $———

This charge includes:
- services of staff
- care of remains
- transportation of remains to cemetery of crematory

DIRECT CREMATIONS: $——— to $———

Our charge for a direct cremation (without ceremony) includes
- removal of remains and transportation to crematory
- cremations
- necessary services of staff and authorizations

If you want to arrange a direct cremation, you can use an unfinished wood box or an alternative container. Alternative containers can be made of materials like heavy cardboard or composition materials (with or without outside covering), or pouches of canvas.

1. Direct Cremation with container provided by purchaser. $———
2. Direct Cremation with alternative container. $———
3. Direct Cremation with unfinished pine box. $———

IMMEDIATE BURIALS: $——— to $———

Our charge for an immediate burial (without ceremony) includes:
- removal of body
- local transportation to cemetery
- necessary services of staff and authorizations.

1. Immediate burial with container provide by purchaser. $———
2. Immediate burial with unfinished pine box. $———
3. Immediate burial with beige cloth-covered soft wood casket with beige interior. $———

FUNERAL ARRANGEMENTS: *Transfer of Remains to Funeral Home* (within 50 mile radius). $———

Embalming ..... $———

Except in certain special cases, embalming is not required by law. Embalming may be necessary, however, if you select certain funeral arrangements, such as a funeral with viewing. If you do not want embalming, you usually have the right to choose an arrangement which does not require you to pay it, such as a direct cremation or immediate burial.

Other Preparation of Body .... $———
Use of Facilities for Viewing:
- Main Stateroom (per day). $———
- Smaller Stateroom (per day). $———

Use of Facilities for Funeral Ceremony:
- Chapel ..... $———
- Smaller Stateroom ..... $———

Other Use of Facilities: Tent and chairs for graveside service. $———
Hearse ..... $———
Limousine ..... $———
Other Automotive Equipment:
- Flower car ..... $———
- Family car ..... $———

Acknowledgement Cards ..... $———
Caskets ..... $——— to $———
(A complete price list will be provided at the funeral home.)
Outer Burial Containers ..... $——— to $———
(A complete price list will be provided at the funeral home.)

Other:
- Pallbearers (6) ..... $———
- Burial clothing ..... $——— to $———

Services of Funeral Director and Staff. $———

Our charge includes arrangement of funeral and consultation with the family and clergy, direction of the visitation and funeral, preparation and filing of necessary notices, and authorizations and consents. This fee for our services will be added to the total cost of the funeral arrangements you select. (Such a fee is already included in our charges for direct cremations, immediate burials, and forwarding or receiving remains.)

ANY NAME FUNERAL HOME

CASKET PRICE LIST

(These prices are effective as of Month, Day, Year)

Simple Casket or Other Containers:
1. Canvas Pouch ..... $———
2. Cardboard Box ..... $———
3. Plywood Box ..... $———
4. Composition Box ..... $———
5. Unfinished Pine Box ..... $———

Caskets:
1. Beige cloth-covered softwood with beige interior. $———
2. Taupe embossed cloth-covered softwood with pleated beige crepe interior. $———
3. 22 gauge bronze colored metal with white interior. $———
4. 22 gauge silver tone metal with blue crepe interior. $———
5. 20 gauge copper toned metal with mauve interior. $———
6. 20 gauge rose colored metal with pleated beige interior. $———
7. Oak stained soft-wood with pleated blue crepe interior. $———
8. Mahogany finished soft-wood with maroon crepe interior. $———
9. Solid white pine with beige crepe interior. $———
10. 20 gauge lead coated steel with bronze tone finish and white crepe interior. $———
11. 20 gauge lead coated steel with bronze tone finish and tan crepe interior. $———
12. 18 gauge steel with pale blue finish and off-white interior. $———
13. 10 gauge steel with bronze highlights and tan crepe interior. $———
14. Solid mahogany with tufted beige velvet interior. $———
15. Hand-finished solid cherry with pale blue velvet interior. $———
16. 16 gauge bronze finished with maroon velvet interior. $———

ANY NAME FUNERAL HOME

OUTER BURIAL CONTAINER PRICE LIST

(These prices are effective as of Month, Day, Year)

In most areas of the country, no state or local law makes you buy a container to surround the casket in the grave. However, many cemeteries ask that you have such a container so that the grave

** This sentence should be omitted if the funeral director does not make a service charge or does not receive and retain a rebate, commission or trade or volume discount upon a cash advance item.

will not sink in. Either a burial vault or grave liner will satisfy these requirements.

Concrete Grave Liner..... $——
Standard Concrete Vault..... $——
Deluxe Asphalt Steel-lined Vault... $——
Solid Copper Vault..... $——

ANY NAME FUNERAL HOME

100 Main Street

Anytown, USA

(123) 456–7891

STATEMENT OF FUNERAL GOODS AND SERVICES SELECTED

Charges are only for those items that are used. If we are required by law to use any items, we will explain the reasons in writing below.

FUNERAL OF ——————
FORWARDING OF REMAINS TO ANOTHER FUNERAL HOME $——

This charge includes:
- removal of remains
- services of staff
- necessary authorizations
- embalming
- local transportation (but not shipping charges)

RECEIVING OF REMAINS FROM ANOTHER FUNERAL HOME $——

This charge includes:
- services of staff
- care of remains
- transportation of remains to cemetery or crematory.

DIRECT CREMATION (As selected) $——

This charge includes:
- removal of body
- necessary authorizations
- services of staff
- transportation to crematory
- cremation of body

TRANSFER OF REMAINS TO FUNERAL HOME $——
(——) miles transported)

IMMEDIATE BURIAL (As selected) $——

This charge includes:
- removal of body
- services of staff
- necessary authorizations
- local transportation to cemetery

EMBALMING $——
- If you selected a funeral which requires embalming, such as a funeral with viewing, you may have to pay for embalming.*
- You do not have to pay for embalming you did not approve if you selected arrangements such as direct cremation or immediate burial.*
- If we charged for embalming, we will explain why below.*

OTHER PREPARATION OF THE BODY $——

USE OF FACILITIES FOR VIEWING $——

USE OF FACILITIES FOR FUNERAL CEREMONY $——

OTHER USE OF FACILITIES $——
(The following facilities are included:
_____
_____
_____

HEARSE $——

LIMOUSINE(S) $——
——Limousines $——, $——

OTHER AUTOMOTIVE EQUIPMENT $——
(This price includes:
_____
_____
_____

ACKNOWLEDGEMENT CARDS $——

CASKET SELECTED $——

OTHER BURIAL CONTAINER $——

SERVICES OF FUNERAL DIRECTOR AND STAFF $——

Services include the following:
- arrangement of funeral and consultation with the family and clergy
- direction of the visitation and funeral
- preparation and filing of necessary notices, authorizations and consents

OTHER: $——
_____
_____
_____

CASH ADVANCE ITEMS:

- Organist and/or other music.. $——
- Hairdresser or barber..... $——
- Flowers..... $——
- Pallbearers..... $——
- Clergy Honoraria..... $——
- Obituary Notice..... $——
- Death Certificate..... $——
- Gratuities..... $——

Total..... $——

TOTAL COST FOR ARRANGEMENTS SELECTED. $——

FOR FUNERAL HOME:..... Date: ——
ARRANGED BY:..... Date: ——

LEGAL, CEMETERY OR CREMATORY REQUIREMENTS COMPELLING THE PURCHASE OF ANY ITEMS LISTED ABOVE:

1. _____
2. _____

*These statements are only required if the funeral provider chooses to use this statement as a contract or final bill.

Alternative 2

ANY NAME FUNERAL HOME

100 Main Street

Yourtown, USA

(123) 456–7891

GENERAL PRICE LIST

(These Prices are Effective as of Month, Day, Year)

The goods and services shown below are those we can provide to our customers. *You may choose only those items you desire.* However, any funeral arrangements you select with include a charge for our services.* If legal or other requirements mean you must buy any items you did not specifically ask for, we will explain the reason in writing on the statement we provide describing the funeral goods and services you selected.

This list does not include prices for certain items that you may ask us to buy for you, such as cemetery or crematory services, flowers and newspaper notices. The prices for those items will be shown on your bill or the statement describing the funeral goods and services you selected.

Forwarding of Remains to Another Funeral Home $——

This charge includes removal of remains, services of staff, necessary authorizations, embalming, and local transportation (but not shipping charges).

Receiving of Remains from Another Funeral Home $——

This charge includes services of staff, care of remains, and transportation of remains to crematory.

DIRECT CREMATIONS: $—— to $——

Our charge for a direct cremation (without ceremony) includes:
- removal of remains and transportation to crematory
- cremations
- necessary services of staff and authorizations

If you want to arrange a direct cremation, you can use an unfinished wood box or an alternative container. Alternative containers can be made of materials like heavy cardboard or composition materials (with or without outside covering), or pouches of canvas.

1. Direct Cremation with container provided by purchaser. $——
2. Direct Cremation with alternative container. $——

* If a consumer may not decline a charge for the services of funeral director and staff this sentence must be included here. Please see the compliance guides for a further explanation.

3. Direct Cremation with unfinished pine box. $——

IMMEDIATE BURIALS: $—— to $——
Our charge for an immediate burial (without ceremony) includes:

- removal of body
- local transportation to cemetery
- necessary services of staff and authorizations

1. Immediate burial with container provided by purchaser. $——
2. Immediate burial with unfinished pine box. $——
3. Immediate burial with beige cloth-covered soft wood casket with beige interior. $——

FUNERAL ARRANGEMENTS:
Transfer of Remains to Funeral Home (within 50-mile radius). $——
Embalming..... $——
Except in certain special cases, embalming is not required by law. Embalming may be necessary, however, if you select certain funeral arrangements, such as a funeral with viewing. If you do not want embalming, you usually have the right to choose an arrangement which does not require you to pay for it, such as a direct cremation or immediate burial.
Other Preparation of Body..... $——
Use of Facilities for Viewing:
Main Stateroom (per day). $——
Smaller Stateroom (per day). $——
Use of Facilities for Funeral Ceremony:
Chapel..... $——
Smaller Stateroom..... $——
Other Use of Facilities: Tent and chairs for graveside service. $——
Hearse..... $——
Limousine..... $——
Other Automotive Equipment:
Flower car..... $——
Family car..... $——
Acknowledgement Cards..... $——
Caskets: Please note that a fee for the use of our services is included in the price of our caskets. Our services include arrangement of funeral and consultation with the family and clergy, direction of the visitation and funeral, preparation and filing of necessary notices, and authorizations and consents.
1. Beige cloth-covered soft-wood with beige interior. $——
2. Taupe embossed cloth-covered soft-wood with pleated beige crepe interior. $——
3. 22 gauge bronze colored metal with white interior. $——
4. 22 gauge silver toned metal with blue crepe interior. $——
5. 20 gauge copper toned metal with mauve interior. $——
6. 20 gauge rose colored metal with beige pleated interior. $——
7. Oak stained soft-wood with pleated blue interior. $——
8. Mahogany finished soft-wood with maroon crepe interior. $——
9. Solid white pine with beige crepe interior. $——
10. 20 gauge lead coated steel with silver tone finish and white crepe interior. $——
11. 20 gauge lead coated steel with bronze tone finish and tan crepe interior. $——
12. 18 gauge steel with pale blue finish and off-white interior. $——
13. 18 gauge steel with bronze highlights and tan crepe interior. $——
14. Solid mahogany with tufted beige velvet interior. $——
15. Hand-finished solid cherry with pale blue velvet interior. $——
16. 16 gauge bronze finished with maroon velvet interior. $——

Outer Burial Containers: In most areas of the country, no state or local law makes you buy a container to surround the casket in the grave. However, many cemeteries ask that you have such a container so that the grave will not sink in. Either a burial vault or a grave liner will satisfy these requirements.
1. Concrete grave liner..... $——
2. Standard concrete vault..... $——
3. Deluxe asphalt steel-lined vault. $——
4. Solid copper vault..... $——

Other:
Pallbearers (6)..... $——
Burial clothing..... $——

[FR Doc. 16151 Filed 7-8-85; 8:45 am]
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16 CFR Part 453

Trade Regulation Rule; Funeral Industry Practices

AGENCY: Federal Trade Commission.

ACTION: Analysis of Public Comments Received on Staff Compliance Guidelines.

SUMMARY: The staff of the Federal Trade Commission publishes its analysis of the public comments received in response to its request for comment on the staff compliance guidelines for the Funeral Rule. This notice summarizes and analyzes the issues raised by the twenty commenters and notes those parts of the guidelines which have been amended, supplemented, or otherwise changed in response to the comments. The revised compliance guidelines are published in a separate notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Lewis Rose, 202-376-2863; Raouf M. Abdullah, 202-376-2891; or Lee J. Plave, 202-376-2805; Attorneys, Federal Trade Commission, Division of Enforcement, Washington, D.C. 20580.

SUPPLEMENTARY INFORMATION: On March 14, 1984, the staff published its compliance guidelines for the entire Funeral Rule in the **Federal Register** for a 30 day public comment period.[1] The guidelines explain how the Rule operates in specific fact situations which may arise in the ordinary course of business for many funeral providers. In addition, the guidelines contain staff's model price lists illustrating the price list requirements of the Rule. The views expressed in the guidelines are those of the staff only. They have not been approved or adopted by the Commission and are not binding on the Commission. However, the guidelines will serve as enforcement criteria for the staff in assessing compliance with the trade regulation rule.

The comment period ended on April 13, 1984. This notice summarizes and analyses the issues raised by the twenty commenters, and notes those parts of the guidelines which have been amended, supplemented or otherwise changed in response to the comments.

Twenty interested parties filed comments.[2] Five of the commenters either addressed issues that are not directly relevant to the request for public comment or suggested substantive amendments or modifications to the Funeral Rule, which go beyond the scope of this inquiry. These comments include opinions regarding the merits of itemized pricing relative to package pricing[3], requests for inclusion of minimum embalming standards in the Rule[4], requests for change in nomenclature used by the Rule[5] and a request to include a disclosure in the Rule about sealed caskets.[6] The remaining fifteen

[1] 49 FR 9688 (March 14, 1984).

[2] The comments have been placed in the public record for this proceeding under Category XXVII (Staff Submissions and Public Comments Filed Regarding Staff Compliance Guidelines) in FTC File No. 215-46. The comments have been labelled Document Nos. XXVII-11 through XXVII-30 respectively.

[3] James H. Pierce, XXII-12 (Funeral directors using itemized pricing could take advantage of consumers under emotional stress and therefore unit pricing is a better system).

[4] Koool, Kave Koold Kabinet Supply Internationale, XXVII-14 (Bodies being held by embalming process should not be allowed to deteriorate for 30 days).

[5] Baumgardner Products Company, XXVII-19; and The Clark Grave Vault Co., XXVII-18; suggested that the term "outer burial container" be changed to "Outside Enclosure" or "Outer Receptacle".

[6] E.G. McCabe, Jr., XXVII-17 (Rule should be amended to in form consumers that sealed caskets prevent water from the body from leaving the casket).

comments are responsive to the request for public comment. This memorandum will discuss each of the issues raised (by subject matter), present staff's analysis of the issue, and discuss the changes, if any, in the compliance guidelines as a result of the comment.

As discussed below, staff has modified the guidelines in response to the comments. We charged 2 illustrations, supplemented responses to 15 illustrations, added 27 illustrations, and changed words in several additional places to provide further clarification. The headings of the sections of this notice have been numbered to parallel the format of the guidelines.

II. *Who Must Comply With the Rule?*

A. Generally

Four comments concerned the quidelines' discussion of the scope and coverage of the Rule.[7] NFDA suggested that the discussion of the definition of a "funeral provider" should be modified to point out that persons who offer to sell funeral goods and services are funeral providers regardless of whether or not an actual sale is made.[8] Staff agrees. Sections 453.1 (i) and (j) of the Rule include persons who offer to sell goods and services in the definition of funeral provider. The guidelines have been modified accordingly.

Two groups commented on illustration #2. This illustration states that persons who separately incorporate their business of providing funeral goods and their business of providing funeral services are funeral providers and must comply with the Rule. NFDA agreed that such persons are funeral providers. They suggested that the guidelines be changed to explain that a funeral provider is a person who controls either through ownership or management or both, the sale of funeral goods and services.[9] PIAA commented that the guidelines should state that the reason such a person is covered is that the intentional structuring or restructuring or a sales program in order to avoid the Rule will not be considered effective.[10] Both comments request that we state a reason for the staff's position in the guidelines while agreeing that the position is correct. We believe that the intent of the illustration is to inform funeral providers that staff will look beyond the corporate or other form of a potential respondent to determine whether a person is a funeral provider, as defined by the Rule. Therefore, staff has added a sentence to illustration #2 to clarify our intent.

Two parties commented on illustration #7.[11] This illustration states that a cemetery which also operates a funeral home is covered by the Rule. NFDA said that the illustration should be modified to include agents or employees of such combinations when they are selling only cemetery goods to consumers. SCI commented that the Rule does not cover the cemetery operations of a cemetery/mortuary combination. Cemetery/mortuary combinations are covered by the Rule because they offer to sell funeral goods and services. Staff does not believe, however, that the Commission intended the Rule to require such combinations to provide price lists to consumers who only want to purchase cemetery goods, such as headstones, from the cemetery and do not inquire about funeral arrangements or the prices of funeral goods and services. Therefore, staff has supplemented illustration #7 to clarify this issue.

PIAA commented on illustration #9 which discusses the applicability of the Rule to direct disposition companies.[12] PIAA suggested that the illustration use alternative containers as an example of a funeral good. Staff has, therefore, added the term "alternative container" to the illustration.

Two parties commented on the applicability of the Rule to crematories. Specifically, PIAA commented, in response to illustration #10, that crematories do not generally provide services to care for and prepare human bodies for final disposition.[13] According to PIAA, however, the cremation process itself is a service prior to the final disposition of the cremated remains. PIAA concludes, therefore, that crematories are funeral providers. CAFMS stated, in response to illustration #8, that crematories always are funeral providers because they always perform a funeral service when they cremate the body.[14] After careful consideration, staff remains unpersuaded by either comment. Staff believes that the cremation process itself is the final disposition because the definition of "funeral services" in the Rule appears to equate cremation with the final disposition and therefore requires an additional act (to prepare or care for) to satisfy the definition of funeral provider. Thus, PIAA's position that crematories which only perform the final disposition are funeral providers is not supported by the Rule. To be covered by the Rule, the crematory must provide care or preparation of the body before the cremation process. We have therefore decided not to modify the guidelines.

B. Pre-Need Contracts Negotiated After the Effective Date of the Rule.

Three interested parties filed comments regarding the Rule's application to pre-need funeral arrangements. Two commenters argued that the Rule does not apply to the sale of funerals on a pre-need basis.[15] In support of their contention, the commenters argue that: (1) During the rulemaking proceeding, the Presiding Officer and BCP staff acknowledged that the application of the Funeral Rule to pre-need arrangements could be difficult and problems could arise in both interpretation and enforcement; (2) the merchandise selected by the consumer may not be available at the time of use; (3) pre-need offerings are usually sold on a package basis; (4) state laws adequately regulate pre-need funerals; and (5) pre-need arrangements may not constitute a "sale " of funeral goods and services.

Staff notes that similar comments were made during the rulemaking proceeding. In particular, during the initial comment period following the Commission's January 22, 1981, Federal Register notice,[16] it was argued that the Rule should not apply to pre-need purchases.[17] The Commission did not modify the Rule in response to these comments. Therefore, we do not believe that it is appropriate for staff to limit the scope of the Rule's coverage to at-need funeral arrangements in the compliance guidelines. Thus, we have not modified the guidelines in response to these PIAA and FSP comments.

C. Pre-Need Contracts Negotiated Prior to Effective Date of Rule

NFDA commented that the introductory explanation to this section of the guidelines refers to the effective date of the Rule without identifying the specific date.[18] Because the Rule became

[7] National Funeral Directors Association ("NFDA"), XXVII-29; Pre-Arrangement Interment Association of America ("PIAA"), XXVII-25; Continental Association of Funeral and Memorial Societies ("CAFMS"), XXVII-27; and Funeral Security Plans, XXVII-28.

[8] NFDA, XXVII-29, Comment Nos. 1 and 2.

[9] NFDA, XXVII-29 Comment No. 3.

[10] PIAA, XXVII-25 Point No. 1.

[11] NFDA, XXVII-29, Comment No. 4; SCI, XXVII-30, Comment No. 2.

[12] PIAA, XXVII-25, Point 3.

[13] PIAA, XXVII-25, Point 4.

[14] CAFMS, XXVII-27, p. 5.

[15] PIAA, XXVII-25 Introduction; Funeral Security Plans ("FSP"), XXVII-28.

[16] 46 FR 6676 (Jan. 22, 1981).

[17] *See*, staff memorandum to Commission dated June 26, 1981, at p. 11.

[18] NFDA, XXVII-29, Comment No. 7.

effective on two different dates, staff believes that including the effective dates in the guides at this place may be helpful.

Illustration #2: NFDA commented that the Rule would apply to contracts negotiated prior to the effective date of the Rule if the contract is downgraded or otherwise modified.[19] Because the illustration as published was directed only to those circumstances where the consumer wants to upgrade the arrangements specified in the contract, staff has modified the illustration to point out that the Rule applies when a consumer wants to change the funeral arrangements specified in a pre-need contract.

III. What Price Disclosures Must Be Made? Section 453.2

B. Price Disclosures Over the Telephone: Section 453.2(b)(1)

Three parties filed comments on the guidelines discussion of the telephone price disclosure provisions of the Rule.[20] The comments addressed the following illustrations:

(a) *Illustration #2:* Two commenters addressed the issue of whether telephone inquiries regarding whether a funeral provider performs funerals for a particular religion triggers the requirement of § 453.2(b)(1) to inform the caller that price information is available by telephone. NFDA commented that reference to a funeral of a particular religious denomination is not a "term, condition, or price" of funeral goods or services.[21] Further, NFDA pointed out that the guidelines conflict with comments made by staff at state compliance seminars. CAFMS endorsed staff's position that the price information disclosure is triggered by inquiries about funerals for a particular religion.[22] After careful reconsideration, staff believes that the position set forth in the guidelines should be changed. Staff agrees that inquiries about particular religious funerals do not constitute the "terms, conditions, or prices" at which funeral goods or services are offered. Thus, the funeral provider is not obligated to inform the caller that price information is available. However, because the information requested concerns the funeral provider's *offerings* and would be readily available, the funeral provider is required by § 453.2(b)(1)(ii) of the Rule to answer the specific question. This approach is more consistent with respect to telephone inquiries which do not concern specific funeral goods and services or prices. Under the amended guidelines, such questions do not trigger the disclosure of price information but still are required to be answered because the information is readily available. The guidelines have been modified, accordingly.

(b) *Illustration #3:* NFDA suggested that the answer to this illustration be expanded to inform funeral providers that questions concerning particular employees, the location of the funeral home, or similar questions dealing with the operation of the funeral home do not trigger the requirement to inform callers that price information is available because they are not about the "terms, conditions, or prices" of funeral goods or services.[23] In addition, NFDA commented that the last sentence in illustration #3 which states that questions about business hours should be answered because the information requested is readily available should be deleted because the Rule does not require any affirmative disclosures in the situation presented. Staff agrees. Questions concerning the location of the funeral home or about particular employees do not trigger the requirement to inform callers that price information is available. Similarly, these questions do not concern offerings or prices and therefore, the funeral provider is not required by the Rule to respond to such inquiries. Staff anticipates though that such questions would normally be answered voluntarily. The guidelines have been changed accordingly.

(c) *Illustration #4:* NFDA commented that this illustration should be split into two illustrations because it makes two points—that an answering machine may be used to register incoming calls and that such a machine may also be used to disclose price information.[24] While staff agrees with NFDA's interpretation of this illustration, we do not believe that it is necessary to alter the guidelines.

(d) *Illustration #6:* CAFMS disagrees with the statement in the guidelines that the availability of price information need not be disclosed in response to a telephone request to pick up a body from the place of death and transfer it to the funeral establishment.[25] CAFMS argues that by requesting such a service, the family is discussing a "term or condition" of a funeral, thereby triggering the Rule's requirement to inform callers that price information is available. After careful consideration, staff is persuaded that inquiring whether a funeral establishment will pick up a body is an inquiry regarding a "term" or "condition" of funeral arrangements. First, inquiring whether the funeral provider will pick up a body is an inquiry about a specific funeral service which is required to be itemized on the General Price List by § 453.2(b)(4) of the Rule. In addition, the Commission noted in the Statement of Basis and Purpose ("SBP") that the time constraints in arranging a funeral after a death has occurred make it difficult for consumers to get price information before choosing a funeral home.[26]

Additionally, because the initial inquiry as to whether a funeral provider will pick up the body from the place of death necessarily must occur within several hours after death, the gathering of price information by telephone may often constitute the only practical way in which price information can be obtained before a funeral provider is selected. Furthermore, the Commission noted that § 453.2(b)(1)(i) is intended to inform the large number of consumers who first contact the funeral home by telephone that price information can be obtained before the selection of a funeral home is made.[27] Therefore, staff believes that the caller is entitled to be informed that price information is available. If the family desired, they could then ask for the price of the service. Therefore, staff has changed illustration #6.

(e) *Illustration #7:* NFDA requested that illustration #7 be clarified by adding two sentences stating that when a funeral director is not available, the person answering the phone should be able to answer questions about prices from the three price lists but that desired information not available on the three price lists may be subject to the availability of a funeral director or other person reasonably able to answer other questions.[28] Staff agrees with the suggestion substantively but believes that the points raised by NFDA are clearly discussed in the guidelines and that changing the language might cause confusion. For example, the guides clearly state that if a funeral director is unavailable, part-time or untrained employees should inform the caller that price information is available and answer specific questions about prices from the preprinted lists. The guidelines further state that if there are questions which cannot be properly answered by

[19] NFDA, XXVII-29, Comment No. 8.
[20] PIAA, XXVII-25; CAFMS, XXVII-27; and NFDA, XXVII-29.
[21] NFDA, XXVII-29, Comment No. 10.
[22] CAFMS, XXVII-27, at p. 1.
[23] NFDA, XXVII-29, Comment Nos. 11, and 12.
[24] NFDA, XXVII-29, Comment No. 13.
[25] CAFMS, XXVII-27, at p. 1.
[26] 47 FR 42260, 42268 (Sep. 24, 1982).
[27] SBP, at 42273.
[28] NFDA, XXVII-29, Comment No. 14.

referring to the price lists, it is permissible to take a message and have a funeral director call the consumer later. Therefore, staff has not modified this illustration.

(f) *Illustration #8:* PIAA suggested that the guidelines should be changed to state that while the Rule does not require a funeral provider to provide price information to pre-need shoppers during non-business hours, such information may be disclosed if desired by funeral providers.[29] Staff does not disagree with the comment. However, funeral providers are always free to disclose price information. The issue is whether price disclosure is required by the Rule in specific circumstances. The Rule does not, in staff's opinion, require the disclosure of price information to any shoppers during non-business hours unless it is the policy of the funeral provider to make funeral arrangements during such hours. Therefore, this illustration has not been amended.

(g) *Illustration #9:* NFDA commented on this illustration and suggested that the guidelines be amended to state that telephone answering services which are used during business hours are not required to make price disclosures.[30] Staffs agrees. Many small volume funeral providers use telephone answering services to receive telephone calls and take messages when the funeral provider is unavailable. These answering services generally are independently operated and may serve many varied businesses. Staff does not believe that the Rule was intended to require that such services become experts on the components of a funeral, including prices. Therefore, staff has extended this illustration to exempt independent telephone answering services that simply take messages from complying with the Rule, regardless of whether the service is used during business or nonbusiness hours.

(h) *New Illustration #10:* NFDA requested that an illustration be inserted into the guidelines concerning a funeral provider's responsibility to provide price information over the telephone when the provider is making funeral arrangements with a family and no other employee is available.[31] NFDA suggested that the guidelines distinguish between pre-need and at-need situations, in a manner similar to illustration #8. Thus, in the situation described, a pre-need shopper would be informed that the call would be returned. However, under NFDA's approach, at-need price inquiries would be answered. Staff agrees in part. In staff's opinion, the Rule should not be interpreted to require funeral providers to disrupt arrangement conferences to respond to telephone inquiries, either at-need or pre-need. Therefore, this illustration states that in this situation, funeral providers may simply take a message and return the call.

C. Price Disclosure for Caskets: Section 453.2(b)(2)

Seven parties filed comments regarding the guidelines discussion of the Casket Price List requirements of the Rule.[32]

(a) *Illustration # 1:* Three parties commented regarding staff's opinion that use of a serial number of a casket is sufficient to identify the offering, as required by § 453.2(b)(2) of the Rule. NFDA stated that the use of a manufacturer's name and serial number as the sole description for a casket or container is not sufficient information to satisfy the Rule's requirements.[33] Similarly, NFDA commented that the use of a manufacturer's name and trademark would not suffice. CAFMS noted that allowing a funeral provider to develop a price list that includes no identifying information other than a model number is the equivalent of having no information at all.[34] William C. Klien, a member of the New York State Funeral Service Advisory Board, commented that neither a photograph alone, a model number alone, nor a description alone is enough to permit the consumer to verify that the casket provided is the casket purchased.[35] In light of these comments, staff has revised the illustration.

(b) *Illustration #3:* CAFMS suggested that this illustration be clarified by defining the term "special ordering" and suggested "procuring for a customer a casket not regularly offered by the funeral establishment" as a possible definition.[36] Staff agrees that it would be helpful to funeral providers if the guidelines defined "special ordering". The guidelines incorporate the definition proposed by CAFMS into illustration #3, with the additional factor that the casket must not be in inventory.

(c) *Illustration #5:* Five parties commented on Casket Price Lists for manufacturer's or supplier's casket showrooms.[37] The comments request additional guidance on how casket companies may be affected by the Rule. Several casket companies maintain casket selection rooms for the convenience of their funeral director customers. The inventory in these showrooms is subject to constant change. Funeral directors who, for a variety of reasons, elect not to maintain their own casket selection showrooms use showrooms maintained and stocked by a casket manufacturer or distributor. After the funeral director makes the funeral arrangements with the family, they are transported to the casket showroom. The issues raised concern the particular problems faced by funeral directors who use these showrooms. It is staff's understanding that many casket manufacturers and distributors are preparing a single Casket Price List for all of the funeral providers in their area.[38] Other funeral providers may be preparing their own Casket Price Lists to comply with the Rule. In either case, the comments raised the following issues for discussion in the guidelines.

First, CMAA and the Bridge Casket Company request guidance on when and by whom the Casket Price List should be offered to consumers.[39] CMAA proposes that if a funeral provider accompanies a family to the casket company selection room, the price list should be offered to the family before they enter the selection room. If, however, the funeral provider does not accompany the family, CMAA recommends that the provider make the price lists available to the family upon departure from the funeral provider's establishment to the casket company. Staff agrees with CMAA's recommendations. Casket manufacturers generally do not sell or offer to sell funeral services and therefore are not funeral providers.[40] The obligation to prepare and present a Casket Price List rests with funeral providers. Therefore, in the context of a casket company showroom, the funeral provider must present the Casket Price

[29] PIAA, XXVII-25, Point 6.

[30] NFDA, XXVII-29, Coment No. 15.

[31] NFDA, XXVII-29, Coment No. 16.

[32] Bridge Casket Company, XXVII-13; William C. Klien, XXVII-20; McCullough Funeral Home, XXVII-23; Casket Manufacturers Association of America ("CMAA"), XXVII-24; PIAA, XXVII-25; CAFMS, XXVII-27; and NFDA, XXVII-29.

[33] NFDA, XXVII-29, Comment No. 17.

[34] CAFMS, XXVII-27, at p. 2.

[35] William C. Klein, XXVII-20, at p. 1.

[36] CAFMS, XXVII-27, at p. 2.

[37] Bridge Casket Company, XXVII-13; McCullough Funeral Home, XXVII-23; CMAA, XXVII-24; CAFMS, XXVII-27, at p. 3; and NFDA, XXVII-29, Comment No. 18. NFDA simply noted that the illustration as published was correct, that the casket manufacturer takes the number of caskets on display into consideration when developing a price schedule, and that the casket price list would not be so voluminous that the consumer would not use it.

[38] Because the guidelines are designed only to provide staff's opinion on compliance with the Funeral Rule, we have not expressed any opinion on whether a manufacturer preparing a single price list for all of their funeral provider customers would violate any other law.

[39] CMAA, XXVII-24; and Bridge Casket Company, XXVII-13.

[40] See illustration #5 at Part IIA of the Guidelines.

List upon beginning discussion of, but in any event before the customer is shown the offerings. Thus, if the family and funeral provider begin discussion of casket offerings at the funeral home, the price list must be offered at that time. Otherwise, the funeral provider must offer it at any time prior to the family being shown the offerings. However, funeral providers can make arrangements with casket manufacturers to give out the Casket Price List as long as the consumer is offered the list upon beginning discussion of, but in any event before being shown the offerings. Illustration #5 has been supplemented with this additional guidance.

The second issue raised by CMAA concerns retention of documents.[41] Specifically, CMAA inquires whether casket companies are required to retain price lists for their various funeral director customers who use the casket company selection room. CMAA also asks whether a casket company could be liable in the event that a casket company does not retain price lists and the funeral provider has not offered its clients the Casket Price List, in violation of the Rule. As noted above, casket companies are normally not covered by the Rule because they do not meet the definition of a funeral provider. However, as the Commission stated in the SBP accompanying the Rule, the Rule does cover a funeral provider's employees and agents. In response to CMAA's request, the guidelines note that the general rule is that only funeral providers are required to comply with the Rule. This point is explicitly stated in amended illustration #5. However, it is staff's opinion that either the casket company or the funeral provider could satisfy the Rule's document retention requirements.

Third, CMAA also requests guidance regarding "customized" caskets.[42] For example, the caskets available in the selection room are often available in different interior materials and designs, exterior hardware, and finishes. CMAA notes that it would be impossible to list the hundreds or thousands of potential combinations on any Casket Price List and states that many casket company selection rooms have the ability to meet such consumer requests. CMAA recommends that any consumer request for a customized casket be excluded from any of the price list requirements. Staff agrees that such requests are "special orders" which do not have to be listed. Section 453.2(b)(2) requires the Casket Price List to contain only those caskets which do not require "special ordering". If a funeral provider offers caskets for sale which may be available in a variety of options, staff believes that it would be sufficient to simply note on the price list that the caskets are available in a variety of interior materials and designs, exterior hardware, and finishes. After a customer completed the arrangements, the Statement of Funeral Goods and Services Selected would describe the casket and its price and the intent of the Rule would be satisfied. Accordingly, illustration #9 has been added to the guidelines on this issue.

Finally, CMAA, Bridge Casket Company, and McCullough Funeral Home commented on the number of caskets that need to be listed on the Casket Price List.[43] CMAA and Bridge Casket Company requested guidance on whether caskets stored in the warehouse need to be included on the Casket Price List in addition to the caskets in the selection room. The warehouse inventory may include hundreds of different caskets. The normal practice is for a casket company casket showroom to contain approximately 20 caskets. However, if a consumer could not find the particular casket desired in the showroom, the consumer would be allowed to select a casket that meets the consumer's needs from the warehouse. CMAA proposes that only the caskets available for sale in the casket selection showroom be disclosed on the Casket Price List. Other caskets, available in the warehouse, would be deemed "special orders". While staff recognizes the problem presented, we disagree with CMAA's proposed solution. The Rule requires all caskets offered which do not require special orderings to be included on the Casket Price List. This provision was inserted in the Rule in response to public comments and industry objection to an earlier version of the Rule which required that the three least expensive caskets be shown in the same manner as other caskets offered for sale. This proposed provision was originally included in the Rule in response to reports that funeral providers were discouraging purchase of such merchandise by all but the most persistant customers.[44] However, the Commission concluded that a less intrusive method of informing consumers about these offerings was available by requiring "full information about a funeral provider's offerings and prices to be disclosed on . . . a Casket Price List."[45] The Commission noted that such disclosures would let consumers know what merchandise and services the funeral providers sell, including the three least expensive caskets.[46] Thus, staff is concerned that if CMAA's proposal were adopted, funeral providers may put their less expensive offerings in the warehouse (which in many cases, is through a door in the showroom) and therefore be able to circumvent the intent of this Rule provision. It is staff's opinion that in the context of casket company showrooms, the caskets listed would generally be limited to those in the showroom. However, if a funeral provider elects to offer any or all of the caskets in the warehouse for sale, then these caskets must be listed on the price list. Under this approach, the number of caskets included on the price list, and the corresponding burden imposed, if any, would be controlled by the funeral provider.

(d) *Illustration #6:* CMAA and the Bridge Casket Company request guidance on how the Rule would apply when a casket described on a funeral provider's Casket Price List is temporarily out of stock and another unit, not on the funeral provider's Casket Price List, may have been substituted.[47] This issue is discussed in illustration #6, which states that if a casket is temporarily out of stock, the funeral provider can simply inform the consumer of this fact when the price list is given to the consumer.

In the context of a manufacturer's selection room, the consumer can simply

[41] CMAA, XXVII-24

[42] *Id.*

[43] CMAA, XXVII-24; Bridge Casket Company XXVII-13; and McCullough Funeral Home, XXVII-23. McCullough Funeral Home commented that his casket supplier has notified him that the casket showroom will be closed due to the Funeral Rule. Specifically, the casket supplier stated his opinion that under the Rule, he can no longer have a showroom unless each unit is itemized on a casket price list, including those units in the warehouse as well as in the showroom. Rather than list the units in the warehouse, the supplier has decided to shut the casket showroom. In staff's opinion, the casket supplier has misunderstood the Rule. As noted above, only funeral providers are obligated to comply with the Rule. Thus, the casket supplier is under no obligation to prepare a casket price list. Under the Rule, however, Mr. McCullough, as a funeral provider, must present his customers with a casket price list when the subject of casket selection is raised. As noted above, it is staff's opinion that in the context of a casket supplier's showroom, the caskets listed need only be those in the showroom. However, if the funeral provider elects to offer the caskets in the warehouse for sale, then he must list them on the price list. Staff has notified the McCullough Funeral Home of our view that they misunderstood this requirement of the Rule.

[44] Statement of Basis and Purpose, (SBP) 47 FR 42260, at 42290 (September 24, 1982).

[45] *Id.*

[46] *Id.*

[47] CMAA, XXVII-24; and Bridge Casket Company, XXVII-13.

be notified upon arrival of the selections that have been changed. Indeed, in its comment CMAA proposes that the guidelines permit casket companies that maintain selection rooms for the use of their funeral director customers to give either the funeral director or the consumer a description of caskets and prices for those units which have been changed. CMAA further recommends that this additional information not be required to have an effective date or the name of the funeral home on it, as required by § 453.2(b)(2) of the Rule, to avoid preparing dozens of such descriptions for a casket company's many different funeral director clients. Finally, CMAA proposes that the Casket Price Lists of these funeral providers include a statement explaining that the provider uses a selection room sponsored by "Any Name" casket company that is used by other funeral providers which may result in some units being temporarily out of stock. The statement would further notify the consumer that a description of the substitute units will be available at the selection room.

After careful consideration, staff believes that the solution proposed by CMAA is appropriate. Accordingly, illustration #6 in this section of the guidelines has been amended to allow the use of a supplemental description of the units that have been either added or deleted. In addition, the guidelines note that this supplemental description need not have the funeral provider's name or effective date on it. However, staff does not believe the disclosure statement recommended by CMAA is required to appear on the Casket Price List since the Rule does not require such a statement.

(e) *Additional illustrations:* NFDA has requested that two additional illustrations be inserted regarding caskets sold in pre-need sales that are unavailable at the time of death.[48] Staff agrees that these suggestions are proper and should be added. Illustration #10 states staff's opinion that caskets maintained as inventory solely to fulfill contractual obligations and not available as a general offering need not be included on the Casket Price List. Illustration #11 states staff's opinion that if a specific casket subject to a pre-need contract is unavailable at time of death, and the contract states that a funeral provider may supply a casket of similar quality, the Rule does not require that the family be presented with a Casket Price List.

[48] NFDA, XXVIII-29, Comment Nos. 5 and 6.

D. Price Disclosures for Outer Burial Containers: Section 453.2(b)(3)

Many of the comments concerning casket prices in the previous section are applicable to outer burial containers also. Thus, where appropriate, the outer burial container price disclosure provisions of the guidelines have been changed to parallel the casket price disclosure provisions. Specifically, illustration #6 has been added to provide guidance to funeral providers who use a manufacturer's or supplier's showroom for outer burial containers. For the reasons discussed in detail above, this illustration states that: (1) Funeral providers are required to prepare price lists for the outer burial container offerings provided to their customers; (2) the items listed would generally be limited to those in the showroom unless the provider elects to offer items in warehouse for sale; and (3) the list should be offered by the funeral provider to the consumer upon beginning discussion of, but in any event before the consumer is shown the offerings.

E. Price Disclosure for Funeral Goods and Services: Section 453.2(b)(4)

Four parties filed comments regarding the General Price List requirements of the Rule.[49]

(1) Itemization

Service Corporation International ("SCI") commented on the general discussion within the guidelines concerning the itemized price lists.[50] SCI's comment was specifically directed at that part of the guidelines which stated that in addition to itemizing the prices for the seventeen items listed in § 453.2(b)(4), funeral providers "must also itemize prices for other goods and services [they] offer." [51] SCI suggests that staff's interpretation of § 453.2(b)(4) is "improper and should be reconsidered." [52] SCI comments that the Rule requires the itemization of *only* the enumerated items listed in § 453.2(b)(4). After careful consideration, staff agrees.

In support of its comment, SCI makes the following arguments. First, SCI states that § 453.2(b)(4)(ii) of the Rule provides that the General Price List must include "retail prices" and "other information . . . for *at least* each of the following items, if offered for sale." [53] The Rule then lists seventeen specific funeral goods and services that are to be included.[54] SCI believes that this provision *requires* price itemization for only the basic goods and services enumerated in the Rule and *permits* the funeral provider to offer additional information about other goods and services at the discretion of the funeral provider.[55] According to SCI, this view is consistent with the plain language of the Rule which mandates a separate listing "for at least each" of the enumerated items. Under this interpretation, the Rule sets a required minimum level of disclosure; funeral providers are free to transcend the "at least" level if they so desire.

Second, SCI argues that several statements in the SBP support their position. According to SCI, the SBP "envisions a scheme under which the primary function of the General Price List is to ensure that funeral consumers receive price information on a set group of basic goods and services." [56] In particular, SCI points to a sentence in the SBP that the list was designed to show consumers "the prices for 1[7] basic goods and services which they might wish to use." [57] In addition, SCI cites footnote 129 in the SBP which states: "[T]he Rule *does not prohibit* listing other items which the funeral provider might offer for sale in addition to those specified." [58]

Finally, SCI argues that requiring funeral providers to list the retail price of every item offered would be enormously burdensome and of questionable benefit to the funeral consumer.[59] In particular, SCI states that listing the prices for these additional goods and services would be impractical because they inherently are not susceptible to informative itemization. For example, SCI points out that many funeral providers regularly offer burial clothing, flowers, and urns. According to SCI, if these were to be listed on an itemized basis on the General Price List, the potential listings would be enormous and subject to continuous change on short notice. This would impose a substantial cost to compile and update these lists. Moreover, according to SCI, a list of floral arrangements or clothing alone would dwarf the remainder of the General Price List, making it likely that fewer customers would read it.

[49] Guardian Funeral Homes, XXVII-11; William C. Klein, XXVII-20; CAFMS, XXVII-27; NFDA, XXVII-29; and SCI, XXVII-30.

[50] SCI, XXVII-30, Comment No. 1, at pp. 2-7.

[51] 49 FR at 9692.

[52] SCI, XXVII-30, at p. 7.

[53] SCI, XXVII-30, at p. 3.

[54] *Id.*

[55] *Id.*

[56] *Id.*, at p. 4.

[57] SBP, at 42273.

[58] Supra, note 56, at p. 4 (emphasis added).

[59] *Id.*, at p. 6.

On the other hand, there are a number of policy arguments to be made in support of the interpretation that the Rule requires itemization of every good or service offered for sale. First, in issuing the Rule, the Commission found that:

> [I]t is an unfair and deceptive act or practice for a funeral provider to fail to furnish price information disclosing the cost to the purchaser for *each* of the specific funeral goods and funeral services used in connection with the disposition of dead human bodies, *including at least* the price of embalming, transportation of remains, use of facilities, caskets, outer burial containers, immediate burials, or direct cremations . . . ." [60]

One can argue that this language supports the conclusion that the Commission intended that funeral providers itemize the prices for *all* funeral goods and services offered, not just the specifically noted items.

Second, in the SBP, the Commission stated that the aim of the Rule was "to lower existing barriers to price competition and to facilitate informed consumer choice." [61] The Commission also noted that a specific goal of the Rule was to facilitate comparison shopping by consumers.[62]

The Commission found that the failure of funeral providers to provide price information resulted in unavoidable and substantial economic injury to consumers who paid supracompetitive prices for the items they purchased.[63] The Commission concluded that there existed " 'a striking absence of price competition in the funeral industry' . . . because consumers do not have access to price information." [64] These general policy statements are consistent with the position that the Rule's intent was to require funeral providers to make price information available to consumers so that they could comparison shop for *all* funeral goods and services and make informed choices. Without price information on the General Price List for other items,[65] the same barriers to price competition for these items would exist as before the Rule took effect, and consumers may still have to pay supracompetitive prices for those items.[66]

After careful consideration of the arguments in favor of requiring the itemization of every good and service offered for sale, and the arguments in support of limiting the itemization requirements to the funeral goods and services specifically enumerated in the Rule, staff has concluded that the latter argument is persuasive. In reaching this decision, staff has decided that the words "at least" together with the language in the SBP cited by SCI outweigh the policy arguments requiring itemization of all goods and services offered for sale. Therefore, staff has amended the guidelines to indicate that, at a minimum, funeral providers must itemize the goods and services specifically enumerated in the Rule and are permitted to disclose additional information or itemized prices if desired.

Finally, one party commented that the guidelines should state that funeral providers may not give greater itemization of the specific items than the categories specified by the Rule.[67] For example, the guidelines state that the price for use of a hearse does not have to be broken down into separate prices for loading, unloading, gasoline, etc. The commenter requested that the guidelines be modified to prohibit itemization of component costs. Staff disagrees. Such a position would prohibit the disclosure of detailed price information by funeral providers who desire to provide more information than the Rule requires. The guidelines clearly state what is required to comply with the Rule. Staff does not believe that it is in the public interest to prohibit a more detailed price disclosure.

(2) Information on the General Price List

NFDA requested that the sentence, "The list must be typed or printed and consumers must be given copies to keep," be changed to "The list must be typed or printed and consumers must be *provided* copies to keep" (emphasis added).[68] Staff disagrees. The word "given" is more appropriate because it denotes a physical offer. In addition, it is the word used in the Rule itself. As noted in illustration #4 under the section of the guidelines discussing distribution of the price list, the Rule requires that the funeral provider physically offer the price list to consumers.

b. *Forwarding and Receiving Remains, Direct Cremations and Immediate Burials:* CAFMS commented that the guidelines need to be clarified to ensure that the fee for professional services of funeral director and staff does not become a catch-all for goods and services not selected by a consumer.[69] Accordingly, staff has attempted to clarify that the professional services may not, by definition § 453.1(o)), include the other sixteen items that the Rule requires be separately itemized. In the context of this section of the guidelines, staff has clarified the fact that unlike the remainder of the available goods and services, the professional services charge should be included in those four types of offerings.

c. *Other Items Which Must be Itemized If Offered.*

(i) *Transfer of Remains to Funeral Home:* CAFMS again commented that the guidelines need to be clarified to ensure that the services associated with this item do not get "packaged" into the professional services of staff.[70] Staff agrees that further clarification will assist funeral providers in complying with the Rule. As noted above, § 453.1(o) specifically states that the services associated with each of the separately itemized offerings may not be included in the fee for the professional services of staff. Accordingly, the guidelines discussion of transfer of remains to funeral home has been modified to clarify this point.

f. *Charges For Professional Services of the Funeral Directors:* Again, CAFMS requested that this section of the guidelines be clarified to ensure that this item not include the services associated with the items the Rule requires be listed separately.[71] The guidelines' discussion of the professional services of the funeral director and staff has been modified accordingly.

(3) Illustrations Regarding the General Price List

(a) *Illustrations # 7, # 8, and # 9:* Three parties commented on the guidelines discussion of funerals for indigent persons. [72] These parties requested additional guidance on how a funeral provider can comply with the Rule when a governmental agency

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[60] 16 CFR 453.2(a) (emphasis added).

[61] SBP, 47 FR at 42260.

[62] *Id.* at 42265.

[63] *Id.* at 42269–71.

[64] *Id.* at 42270.

[65] SCI's comment also suggested that price ranges for other items such as urns, flowers, and burial clothing "provide virtually no meaningful price information to the consumer." SCI at 7 n. 1. SCI's conclusion overlooks the fact that there are many "other" items for which detailed price information is necessary in order to facilitate informed choice and price competition.

[66] The Commission noted that price information would likely not be made available to consumers in any form other than the general price list, due to the "unique structural and demand characteristics of this industry . . . ." SBP, 47 FR at 42270.

[67] William C. Klein, XXVII–20.

[68] NFDA, XXVII–29, Comment No. 20.

[69] CAFMS, XXVII–27, at p.4.

[70] *Id.*

[71] *Id.*

[72] Guardian Funeral Homes, XXVII–11; CAFMS, XXVII–27, at p. 4; NFDA, XXVII–29, Comment No. 22.

requests bids for a package of goods and services for a unit price and whether a General Price List or Statement of Funeral Goods and Services Selected must be offered to the family, government, or both parties. In addition, NFDA requested that illustration # 7 make clear that persons not qualified for the special funeral arrangement provided for indigents are not entitled to the General Price List prepared exclusively for indigent persons. Staff agrees that additional guidance would benefit funeral providers in complying with the Rule. Accordingly, staff has clarified illustration # 7, as requested by NFDA. In addition, several new illustrations have been added. Illustration # 8 states that if a government agency requests bids for a package of funeral goods and services at a unit price, funeral providers may comply with the request and need not submit itemized prices. Illustration # 9 states that when both the family and government agency are purchasing funeral goods and services (i.e., the government pays for the basic funeral and the family supplements the arrangements), both are entitled to the price lists required by the Rule.

(b) *Additional Illustrations:* NFDA and CAFMS requested that the guidelines' discussion of the General Price List be expanded to include several additional illustrations. Each suggested illustration will be discussed briefly below.

(1) *Illustration # 10:* CAFMS suggested that an illustration be added making clear that funeral providers are required to make their price list available to citizens groups.[73] Staff agrees. The SBP describes the difficulty that citizens groups, including memorial societies, have had in the past, in obtaining price information. Section 453.2(n) of the Rule clearly defines persons as including associations, individuals, or other entitles. Therefore, staff has added illustration # 10 which states that citizens groups are entitled to the Rule's protection.

(2) *Illustration #11:* NFDA requested an illustration concerning funeral providers who make funeral arrangements pursuant to an agreement with a recognized group or society, such as a memorial society, labor union, or corporation.[74] Often, funeral providers will enter into such agreements by offering a discounted price to members of those groups because of increased volume. NFDA recognizes that funeral providers must comply with the Rule and offer price lists to those persons but requests an illustration stating that other persons not eligible for these rates are not entitled to these "special" General Price Lists. This approach is similar to the one taken by staff in regard to indigent funerals. A funeral director satisfies the Rule's requirement by providing the consumer with the list of prices at which it will sell to that consumer. Therefore, illustration #11 has been added in response to NFDA's request. It should be understood, however, that a funeral director would be required to fully respond to telephone requests for information concerning this information.

(3) *Illustration #12:* NFDA requested that an illustration be added to the guidelines stating that a funeral provider may not charge a fee for the forms given to consumers.[75] Staff agrees and has therefore added illustration #12 to the guidelines regarding this issue.

(4) *Illustration #13:* NFDA requested an illustration regarding funeral providers who do not own limousines but who, rather, rent the limousine from a third party when needed.[76] NFDA suggested that, in such a case, the limousine would be a cash advance item since it is an item obtained from a third party and paid for by the funeral provider on the purchaser's behalf, as required by § 453.1(c) of the Rule. Therefore, NFDA states that the funeral provider need not list the limousine on the General Price List but could treat it as a cash advance item. Staff agrees with NFDA's position and has included illustration #13 on this issue in the guidelines.

(5) *Illustration #14:* NFDA also requested an illustration stating that funeral providers are not limited in the number of offerings that may be listed on the General Price List.[77] Staff agrees. Illustration #14 has been drafted to state that funeral providers may add additional categories and uses the example of off-premises services.

(6) *Illustration #15:* NFDA has also requested an illustration stating that funeral providers may include terms of payment on the General Price List.[78] The Rule does not prohibit funeral providers from adding any additional information on the forms required by the Rule as long as the information is not unfair or deceptive. Staff has added illustration #15 to the guidelines as requested by NFDA.

(7) *Illustration #16:* NFDA has also requested an illustration regarding funeral arrangements made partly over the phone and partly in person.[79] Staff has added illustration #16 to the guidelines using the facts proposed by NFDA.

(8) *Illustration #17:* NFDA requests that an illustration be added to this section of the guidelines concerning whether a funeral provider is required to present a General Price List when going to a nursing home for removal of a body and is asked by the family if the funeral home is available at a specific time and day.[80] NFDA states that the Rule does not require the family to be given a price list in such a situation.

Section 453.2(b)(2)(i) of the Rule states that when people inquire in person about funeral arrangements, the funeral provider must offer the General Price List. In the situation raised by NFDA, the family has only asked the funeral provider in person about the availability of the funeral home, and therefore has not triggered the requirement to be offered a General Price List. However, if the family wants to reserve the funeral home and the funeral provider is willing to make these arrangements while at the nursing home, then the Rule would require that the family be given a General Price List because they inquired about a specific funeral good. Under this approach, funeral providers would not be placed in the uncomfortable position of presenting a price list and appearing concerned about money at an awkward time unless they were willing to make specific arrangements. In addition, consumers would be ensured of receiving a price list before they made any specific arrangements. Accordingly, illustration #17 has been added to the guidelines to clarify this point.

(9) *Illustration #18:* NYSFDA and NFDA requested that the guidelines discuss how funeral providers can comply with the Rule when state law specifies that items considered "cash advances" under the Rule are required to be listed on the price list under state law.[81] For example, NYSFDA and NFDA cite a state law that prohibits charging a fee or retaining a commission, rebate, or discount for cash advances and requires that if a fee is charged or commission, rebate or discount is retained, the item must be listed as a good or service by the funeral provider. Examples of such goods would be flowers, death notices, and monuments. The Funeral Rule does not prohibit such an approach. Staff has

[73] CAFMS, XXVII-27, at p.5.
[74] NFDA, XXVII-29, Comment No. 23(a).
[75] NFDA, XXVII-29, Comment No. 23(b).
[76] NFDA, XXVII-29, Comment No. 23(e).
[77] NFDA, XXVII-29, Comment No. 23(f).
[78] NFDA, XXVII-29, Comment No. 23(g).
[79] NFDA, XXVII-29, Comment No. 23(h).
[80] NFDA, XXVII-29, Comment No. 23(i).
[81] NFDA, XXVII-29, Comment No. 34; NYSFDA, XXVII-26, Comment No. 1.

added illustration #18 to the guidelines on this issue.

(10) *Illustration #19:* Another illustration suggested by NFDA for this section of the guidelines concerns whether a funeral provider is required by the Rule to offer a General Price List to a consumer during an arrangements conference when the discussion concerns the final illness, information for the death certificate, or social security benefits.[82] Staff does not believe that a General Price List would be required to be given to a family at that time because an inquiry has not yet been made about funeral arrangements or the prices of funeral goods or services. Illustration #19 discusses this issue.

(11) *Additional Suggested Illustration:* Finally, NFDA suggested that the guidelines allow funeral providers to allocate the cost of the professional services into each of the goods and services offered, rather than have a separate fee or incorporate the cost into the price of the caskets. In such a case, NFDA suggested that both of the disclosures required by § 453.2(b)(4)(iii)(c) would be misleading. Therefore, NFDA suggested that a substitute disclosure should be used informing the consumer that in purchasing any of the items, the price includes a fee for the use of the professional services. Staff believes that this proposal requests a substantive modification to the Rule and is therefore beyond the scope of the guidelines. Section 453.2(b)(4)(iii)(c) of the Rule clearly provides that the services of funeral director and staff must be disclosed either by a separate listing or by merging it into the price of the casket. The proposal by NFDA requests a third method of disclosure which is not permitted by the Rule. Accordingly, we have not incorporated this proposal into the guidelines.

F. Price Disclosures at the Conclusion of the Arrangements Discussion: Section 453.3(b)(5)

NFDA has commented on illustration #5 in this section of the guidelines which discusses the Rule's requirements when the funeral provider wants to use the Statement of Funeral Goods and Services Selected as a final bill.[83] Staff believes that NFDA's proposed answer is essentially the same as the present text and has decided to leave the answer as originally drafted.

G. Other Pricing Information: Section 453.2(b)(6)

NFDA has requested that an additional illustration be inserted in the guidelines regarding whether package prices need to be listed in writing on the General Price List.[84] NFDA's position is that such information need not be included on the price list. However, NFDA states that the prices must be available in writing at the funeral home. Staff agrees in part. In staff's opinion, package prices are not required to appear in writing at all. Section 453.2(b)(6) of the Rule permits funeral providers to give any other price information, in any other format, in addition to the price list requirements, so long as the Statement of Funeral Goods and Services Selected is given when required by the Rule. The issue raised concerns the interpretation of the phrase "in any other format." Staff believes that this phrase permits other methods of pricing, such as package or functional pricing, to be made orally or in writing. This interpretation is consistent with our position that the Rule requires funeral providers to list only the enumerated goods and services in § 453.2(b)(4) and that other written disclosures are permitted but not required.

IV. What Representations Are Prohibited? Section 453.3

A. Representations Concerning Embalming: Section 453.3(a)

Three parties commented on the Rule provisions prohibiting misrepresentation of embalming requirements.

CAFMS commented that the list of four circumstances in the introductory explanation of § 453.3(b) of the Rule is not complete and should include, for example, bequeathal to medical school.[85] Therefore, CAFMS suggested that the guidelines state that the list is not all inclusive or eliminate the list. Staff disagrees. This portion of the guidelines is designed to explain the provisions of § 453.3(a)(2)(i) of the Rule. The four items listed in the guidelines are the only four representations prohibited by that provision of the Rule. Therefore, staff believes that this portion of the guidelines is accurate and should remain as originally drafted.

CAFMS also commented that illustrations #2, #5, #6 should not discuss whether embalming is required by law or funeral home policy, but rather whether embalming can be recommended or is necessary under the circumstances set forth in the illustrations.[86] Staff disagrees. The relevant Rule provisions prohibit misrepresentations that embalming is required by law or funeral home policy in certain enumerated circumstances. Thus, a funeral provider may recommend embalming in any instance but can not misrepresent that it is required by law or funeral home policy. Therefore, illustrations #2, #5, and #6 should not be changed.

The New York State Funeral Directors Association requested that the guidelines discuss how funeral directors in New York State can comply with the Rule when it may conflict with New York State law.[87] Staff does not believe that this issue should be addressed in the guidelines. Staff is aware that New York State law requires different language from that required by the Funeral Rule. We are working with the New York State Department of Health and the New York State Funeral Directors Association to ensure compliance with both state and federal law. However, because the problem is relevant to only one state, it is not appropriate for discussion in the compliance guidelines.

The New York State Funeral Directors Association also requested staff's opinion regarding whether Jewish funeral homes may delete the embalming disclosures[88] if embalming is not furnished in a particular case.[89] The issue raised in the comment is distinct from the case where the firm does not offer embalming as a service at all. Rather, NYSFDA argues that the embalming disclosure required by the Rule will cause needless concern for families seeking traditional Jewish funeral services, because embalming is not permitted by the Jewish religion. While staff is sensitive to the concerns raised in this comment, it appears to involve a substantive modification of the Rule that is not appropriate for staff guidelines. Such an issue would be best considered in the context of an exemption request pursuant to section 18(g) of the FTC Act.

Finally, NFDA requested that an illustration be added to the guidelines stating that even if state law does not require embalming, a funeral provider may inform a family that embalming is required for funerals with a viewing.[90] Staff believes that this point

[82] NFDA, XXVII-29, Comment No. 35.
[83] NFDA, XXVII-29, Comment No. 26
[84] NFDA, XXVII-29, Comment No. 19.
[85] CAFMS, XXVII-27, at p. 5.
[86] *Id.*
[87] NYSFDA, XXVII-26, Comment No. 3.
[88] Sections 453.3(a)(2), 453.5(b)
[89] *Id.*
[90] NFDA, XXVII-29, Comment No. 24.

is already adequately addressed in illustration #5 of this section of the guidelines. Illustration #5 states that in jurisdictions with no state laws requiring embalming, funeral providers may inform families that request funerals with a viewing that embalming is required as a practical necessity. Therefore, staff does not believe that an additional illustration is necessary, as requested by NFDA.

B. Representations Concerning Caskets for Cremations: Section 453.3(b)

NFDA commented on illustration #4 of the guidelines discussion of § 453.3(b) of the Rule.[91] NFDA states that the answer is misleading and suggested language to clarify the issue. The guidelines, as published for comment, state that funeral providers who arrange for cremations after a viewing are required to include the disclosure required by § 453.3(b) of the Rule in conjunction with the price for direct cremation, if they offer direct cremation. The guidelines also note that funeral providers may explain to the family that alternative containers and unfinished wood boxes are not necessarily available for cremations that occur after a viewing. NFDA's proposal takes a different approach. NFDA states that when a receptacle for the body is discussed, the Casket Price List which contains caskets, unfinished wood boxes, and alternative containers must be shown to the family. According to NFDA, no other oral representations are required but the funeral provider may indicate orally that his firm does not offer an unfinished wood box or alternative container in any instance other than direct cremation. After considering NFDA's comment, staff believes that illustration #4 would be clearer if both staff's and NFDA's approach were combined. Accordingly, staff has added the approach suggested by NFDA to this illustration.

Curtis Rostad commented that the disclosure required by § 453.3(b) of the Rule is misleading because the pouches that are common to the industry are made of either rubber or vinyl and not canvas and because the crematories in his region require rigid containers.[92] Therefore, Mr. Rostad states, the Rule requires him to offer merchandise that is either not available or not acceptable. Staff believes that Mr. Rostad's comment reflects a misunderstanding of the Rule. The Rule does not require that a funeral provider offer unfinished wood boxes and every type of alternative container. Rather the Rule simply requires funeral providers to offer either an unfinished wood box or alternative container and include a disclosure on the price list informing consumers that they may buy either an unfinished wood box or an alternative container. Because the term "alternative container" may be unfamiliar to the public, the Rule requires an illustration of the term. The illustration is an example only; funeral providers may substitute vinyl or rubber pouches for the canvas pouches. See § 453.1(b) of the Rule which defines alternative containers as pouches of canvas or other materials. Similarly, funeral providers may inform consumers in writing that crematory requirements prohibit use of non-rigid containers, as long as that is the case. Staff has added illustration #5 to this section of the guidelines to assist funeral providers in complying with this portion of the Rule.

C. Representations Concerning Outer Burial Containers: Section 453.3(c)

Two parties commented on the guidelines discussion of the Rule's provisions regarding representations concerning outer burial containers.

NFDA commented that the introductory explanation to the Rule's provisions on misrepresentation of outer burial container requirements implies that funeral providers are required to make an oral disclosure that grave liners are suitable for meeting a cemetery requirement.[93] Staff agrees that the Rule does not require an oral disclosure. Therefore, we have modified the explanation to make clear that the Rule requires a written disclosure.

Curtis D. Rostad commented that the disclosure required by § 453.3(c) of the Rule states that cemeteries "ask" that an outer burial container be purchased rather than using the term "require", thereby implying that the consumer can ignore what is, in fact, a requirement.[94] In staff's opinion, the comment requests a modification to the Rule which is beyond the scope and purpose of the guidelines. However, it may assist funeral providers if the guidelines note, in this context, that funeral providers may, if desired, place additional information on the Outer Burial Container Price List. For example, funeral providers can list the outer burial container requirements, if any, imposed by the local cemeteries. This additional information might aid consumers and also serve to assist funeral providers by making clear that the cemetery policy requires the purchase. Accordingly, staff has added illustration #3 to this section of the guidelines.

E. Representations Concerning Preservative and Protective Value Claims: Section 453.3(e)

CMAA requested that illustration #3 of this section of the guidelines be revised because CMAA is unaware of any warranty offered by any manufacturer which makes preservative representations.[95] CMAA therefore suggested that the guidelines avoid implying that preservative claims are made by manufacturers of caskets or vaults. While preservative claims may not be being made currently, the rulemaking record indicates that such claims were made in the past,[96] and the Funeral Rule includes a provision that prohibits those claims. Therefore, staff has included an illustration in the guidelines to make clear that preservative claims violate the Rule, to assist funeral providers in this regard should such claims be made in the future.

V. Can the Sale of Any Funeral Goods or Funeral Services Be Conditioned Upon the Purchase of Any Other Funeral Goods or Services? Section 453.4

B. Other Required Purchases of Funeral Goods or Services: Section 453.4(b)

Three parties filed comments on the guidelines discussion of § 453.4 of the Rule.

(a) *Introductory explanation in the guidelines.*—NFDA commented on the guidelines discussion of Section 453.4(b)(2)(ii) which allows funeral providers to refuse to comply with a request for a combination of goods or services which would be impossible, impractical or excessively burdensome to provide.[97] The guidelines state that this provision does not allow a funeral provider to refuse a request simply because the funeral provider does not like it. NFDA requests that this statement be strengthened to make clear that the Rule requires funeral providers to comply with a consumer's demand that they do not approve of "even though the funeral provider may refuse to offer it (the requested goods or services) generally to the public". Staff does not believe that this provision of the Rule was intended to require funeral providers to comply with a consumer's demand for goods or services that the

[91] NFDA, XXVII-29, Comment No. 28.
[92] Curtis Rostad, XXVII-15.
[93] NFDA, XXVII-29, Comment No. 29.
[94] Curtis Rostad, XXVII-15.
[95] CMAA, XXVII-24, at p. 4.
[96] 47 FR 42260, at 42278 (September 24, 1982).
[97] NFDA, XXVII-29, Comment No. 31.

funeral provider does not offer for sale. To clarify this issue, staff has included illustration #10 under subsection B which states that a consumer's request for goods or services not offered for sale would be impractical to comply with.

(b) *Illustration #2:* This illustration states that a funeral provider who elects to make the professional service charge non-declinable and adds it to the cost of the casket may charge a fee for professional services to consumers who provide their own casket. NFDA states, in its comment, that under these circumstances, the funeral provider must include on the General Price List a listing for the service charge when the consumer provides a casket and indicate that in such event the service charge is non-declinable.[98] Staff agrees and has modified the response to illustration #2 in accordance with NFDA's suggestion.

(c) *Illustration #11:* PIAA and CAFMS requested staff's opinion on whether a funeral provider may insist that a consumer purchase funeral goods from the provider as a condition of providing the requested funeral services. For example, PIAA inquired whether it is a violation of the Rule for a funeral provider to indicate to a consumer who has acquired funeral goods elsewhere that the funeral provider will not perform the requested funeral services unless the consumer purchases the goods from them.[99] CAFMS requested an illustration stating that a funeral provider cannot insist that a consumer purchase a container from the provider in order to arrange for a direct cremation.[100] In staff's opinion, both situations raised by the commenters would violate § 453.4(b) of the Rule which prohibits a funeral provider from requiring consumers to buy unwanted goods and services in order to buy other requested goods and services. The situation raised by PIAA is already expressly discussed in the guidelines in illustration #3 in the discussion of who is covered by the Rule. Therefore, an additional illustration is not required in this section. We have, though, added illustration #11 which states that a funeral provider may not insist that a consumer who desires to arrange a direct cremation purchase the container from a funeral provider in order to receive the services.

(d) *Illustration #12:* NFDA has requested that three illustrations be added to the guidelines regarding required purchases. The first illustration would state that funeral providers can not have a basic facility charge that is a nondeclinable item because the Rule provides that only the professional services of staff and items required by state law can be nondeclinable items.[101] Staff agrees. Therefore, we have added illustration #12 to this section of the guidelines.

(e) *Illustration #13:* The second illustration requested by NFDA concerns whether a funeral provider can require a consumer who declines embalming to pay for other preparation of the body.[102] NFDA proposes that if a funeral provider separately lists other preparation of the body and the proposed use of this preparation procedure has been selected by the family, the funeral provider may charge for such services. Staff agrees. Under the Rule, funeral providers are required to list other preparation of the body as a separate item which may be selected by a consumer if desired. However, the consumer may not be required to purchase other preparation as a matter of funeral home policy, if embalming has been declined. Illustration #13 has been added to assist funeral providers in this fact situation.

(f) *Illustration #14:* The third additional illustration requested by NFDA regarding required purchases concerns whether a funeral home which operates a crematory in or about its premises serving a number of funeral providers can require that an unfinished wood box be used for cremations.[103] NFDA answers that such a requirement is not prohibited by the Rule. Staff agrees. A crematory operated either apart from or in conjunction with a funeral home is not prohibited under the Rule from imposing a requirement mandating the use of any container, other than a casket. Therefore, we have added illustration #14 to this section of the guidelines.

VI. Can a Fee Be Charged for Services Provided Without Prior Approval? Section 453.5

(a) *Illustration #7:* Four parties filed comments on the need to provide price information to consumers when requesting permission to embalm. John Henderson Company commented that this is unprofessional, unethical, and a "tacky" procedure[104] and asked that the Rule not require that funeral providers affirmatively quote the price for embalming when seeking permission to embalm but rather allow the price to be discussed during the arrangements conference, or if asked by the family when permission is sought. Don G. Hasson filed two similar comments, as an individual and in his capacity as president of the South Dakota Funeral Directors Association.[105] Mr. Hasson suggests that the proper time to discuss the price for embalming is during the arrangements conference. NFDA commented that funeral providers requesting permission to embalm by telephone are not required to disclose the price of embalming.[106] Staff has heard similar comments from funeral directors during our industry outreach campaign.

Section 453.5 of the Rule requires funeral providers to obtain permission to embalm for a fee unless embalming is required by state law. Section 453.2(b)(1)(b) of the Rule requires funeral providers to inform consumers that price information is available by telephone if the consumer calls and asks about the "terms, conditions, or prices" of funeral goods or services. In staff's opinion, if a funeral provider attempts to obtain permission to embalm by telephone and is asked questions about whether embalming is necessary, a "term, condition, or price" of a funeral service has been raised. During such telephone discussions the provider must inform the consumer that price information is available. If the consumer asks about the price, then the price must be disclosed. Illustration #7 has been added to the guidelines to advise funeral providers of staff's opinion on this point.

(b) *Illustration #8:* Similarly, § 453.2(b)(4) of the Rule requires funeral providers to offer a price list to consumers who inquire in person about "funeral arrangements". As noted earlier, the requirement to comply with the Rule is not limited to arrangements made within the funeral home. If funeral providers offer to sell funeral goods or services outside of the funeral home, they must be prepared to comply with the Rule when consumers inquire about arrangements or prices. In requesting permission to embalm, it is staff's opinion that the funeral provider is offering to sell a funeral service and triggering § 453.2(b)(4) of the Rule. Thus, a price list would need to be offered to the family. Staff has added illustration #8 to the guidelines to clarify this point.

(c) *Illustration #9:* NFDA has requested that an additional illustration be added stating that persons making pre-need contracts which authorize

[98] NFDA, XXVII-29, Comment No. 32.
[99] PIAA, XXVII-25, Point 8.
[100] CAFMS, XXVII-27, at p. 5.
[101] NFDA, XXVII-29, Comment No. 23(d).
[102] NFDA, XXVII-29, Comment No. 25.
[103] NFDA, XXVII-29, Comment No. 30.
[104] John Henderson Company, XXVII-22.
[105] Don G. Hasson, XXVII-21; South Dakota Funeral Directors Association, XXVII-16.
[106] NFDA, XXVII-29, Comment No. 33B.

embalming have given the funeral provider permission to embalm.[107] Therefore, according to NFDA, the funeral provider does not have to obtain permission to embalm at-need and need not disclose the cost of embalming to the family. We have added illustration #9 to make this point.

Conclusions

The proposed changes suggested by staff are consistent with the Commission's stated intent concerning the need for the Funeral Rule, the Rule, and the Statement of Basis and Purpose. In our opinion, staff's proposals do not cause additional burdens to funeral providers. No protections have been taken away from consumers. Rather the proposals clarify staff's positions on issues that were not discussed in sufficient detail or at all in the guidelines previously published for comment.

List of Subjects in 16 CFR Part 453

Funerals, Trade practices.

By Direction of the Commission.

Emily H. Rock,

Secretary.

[FR Doc. 85-16150 Filed 7-8-85; 8:45 am]

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[107] NFDA, XXVII-29, Comment No. 33A.

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